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Williams' Law and Practice in Bankruptcy; comprising the Bankruptcy Act, 1883, the Debtors Acts, 1869, 1878, and the Bills of Sale Acts, 1878 and 1882. Third Edition. By R. VAUGHAN WILLIAMS and W. VAUGHAN WILLIAMS, assisted by EDWARD WM. HANSELL, Esqrs., Barristers-at-Law. Demy 8vo. 1884. Price 17. 8s. cloth.

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Gray's Bankruptcy Manual.—The Bankruptcy Act, 1883, and Rules, Forms, Scales of Costs and Fees, and Orders of Board of Trade thereunder, with Notes, giving cross-references, comparisons with the old Act, Rules, &c., and sectional and marginal references to "Chitty's Digest of all Reported Decisions," an Introduction, showing the changes, Analysis, an Appendix on the Debtors' and other Acts and Rules, Tables, &c., and a Full Index. Second Edition. By GEO. G. GRAY, LL.D. (London), of the Middle Temple, Barrister-at-Law, &c. Demy 8vo. 1884. Price 12s. 6d. cloth.

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THE
PATENTS, DESIGNS, AND
TRADE MARKS ACT, 1883.

L. En. C28 e.

Patent 72

THE
PATENTS, DESIGNS, AND
TRADE MARKS ACT, 1883

(46 & 47 VICT. c. 57)

WITH THE
RULES AND INSTRUCTIONS
TOGETHER WITH
PLEADINGS, ORDERS, AND PRECEDENTS.

BY
J. E. CRAWFORD MUNRO, LL.M.

OF DOWNING COLLEGE, CAMBRIDGE, PROFESSOR OF LAW IN THE VICTORIA UNIVERSITY, AND
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

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PREFACE.

THIS Edition of the Patents, Designs, and Trade Marks Act, 1883, includes the Instructions lately issued by the Comptroller, as well as the Rules drawn up by the Board of Trade. The Instructions are not restricted to suggestions for the benefit of intending applicants. They contain some new provisions made by the Comptroller under the powers given him by the Rules. For instance, the manner in which an agent is to be authorised to apply for registration of a trade mark, and the number and size of woodblocks or electrotypes to be furnished for the purposes of advertisement in the "Trade Marks Journal," will be found in the Trade Marks Instructions, and not in the Rules. The same Instructions contain two new Forms, one relating to the Counter-statement of an applicant where there is opposition to Registration, and the other to the form in which security for costs is to be taken. The most important paragraph in the Patents Instructions is that which states the view

taken by the Patent Office as to the payment of fees on patents granted on applications pending on the 31st Dec. 1883; a matter that is discussed in the Introduction. The Notes have been restricted to matters arising directly out of the Act. Under each section reference will be found to the Rules, Instructions, and Forms relating thereto, and, where necessary, reference is also made to the Rules of the Supreme Court, 1883, and to the new Bankruptcy Act. The Table of Cases is indexed as to names of both defendants and plaintiffs. For convenience of reference, the Instructions have in each case been placed immediately after the Rules to which they relate. No new Rules have as yet been issued in regard to practice before the Judicial Committee, and the existing rules are therefore printed in the Appendix.

I have to thank my friends Mr. W. A. Copinger and Mr. J. C. Graham, of the Middle Temple for valuable suggestions as to the Precedents; and I am much indebted to M. Munro for assistance in correcting the proofs.

J. E. C. M.

LINCOLN CHAMBERS,
18, SOUTH KING ST., MANCHESTER,
April, 1884.

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(46 & 47 Vict. c. 57.)

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Patents.

- P. 32, line 6, s. 19. *Singer v. Hassan*, W. N. 1884, p. 83. Leave to disclaim during action given though action pending at commencement of the Act : plaintiff to pay costs of amendment in any event : defendants to have fourteen days after notice of amendment, to abandon, and in such case to have costs of action other than those of appeal from Chambers.

Designs.

- P. 83, line 8, s. 58. *Grafton & Co. v. Watson & Co.*, L. T. March 29th, 1884, 390. Where the general effect of a design being a reproduction of another design, held "a fraudulent and obvious imitation" within s. 58 of the Act of 1883, and injunction granted on motion.

Trade Marks : Act 1875.

- P. 92, line 44. *Leonard & Ellis v. Wells & Co.*, W. N. 1884, pp. 5, 60. Held that "Valvoline" was a word descriptive of an article, and not entitled to be registered as a trade mark.
- P. 92, line 7. *In re Anderson's Application*, W. N. 1884, 75. *Times*, 19th March. Registration refused of a portrait of Baron Liebig with the words "Brand Baron Liebig," on the ground that portrait was not distinctive and that as the words "Liebig's Extract of Meat" had been held to be common to the trade, the registration would be calculated to mislead.
- P. 101, line 10. *Hudson v. Osgerby*, W. N. 1884, p. 83. That a defendant in an action to restrain infringement submits to an injunction is not a special ground to enable Court to order taxation of costs on the higher scale under R. S. C. 1883, O. LXV. r. 9.
- P. 106, line 11. *Momson v. Boehm*, W. N. 1884, 68. Mere non-user or mere non-registration does not constitute an intention to abandon a trade mark.
- P. 127, line 17. *In re Ralph's Trade Mark* is now reported, 25 Ch. D. 194.
- P. 127, line 17. *In re Riviere's Trade Mark*, W. N. 1884, 68. Heard on the merits and held that the right to use the mark in question depended on the correspondence between the parties.
- P. 126, line 36.

Act 1883.

- P. 242, line 6. *In re Keep's Trade Mark*, W. N. 1884, 30. Restrictions on use of a trade mark agreed to by the party registering and a second party, ordered on an *ex parte* application to be entered on the register, the T. M. Rules, 32. Comptroller assenting in writing.

INTRODUCTION.

THIS Act cannot be regarded as a codification of the law relating to Patents, Designs, and Trade Marks. Several departments of that law are left untouched. The Act, for instance, does not prescribe what is the subject-matter of a patent, save in so far as it refers to the Statute of Monopolies; nor does it state what amounts to an act of infringement. The Merchandise Marks Act, and the various statutes relating to marks on special goods (except marks on cutlery) are left untouched. That part of the Act which treats of designs most nearly approaches a complete statement of the law.

PATENTS,

The Act aims mainly at simplifying the methods of obtaining, amending, extending, and revoking patents. No attempt is made to alter or even state the substantive law beyond a reference to the principles relating to prolongation. Some attention has been drawn to the transitionary clauses, more especially those relating to the effect of the Act on pending applications. By sect. 45, the provisions

of the Act "relating to applications for patents and proceedings thereon," are to have effect only in respect of applications made after the commencement of the Act. Then after saying that the section relating to compulsory licenses is only to affect patents granted on applications made after the 31st Dec. 1883, it states: sub-sect. (3), "in all other respects (including the amount and time of payment of fees), this Act shall extend to all patents granted . . . on applications then pending."

Pending
applica-
tions.

The first question that arises on this section, is, what meaning ought to be given to the words "applications for patents and proceedings thereon." No definition is given of "application." The word is even used in very different senses throughout the Act. In sect. 4, it is used as equivalent to the form of application with the accompanying specification, in sect. 10, it means the formal application alone, whilst in other sections it refers to the fact of application. It is submitted that the words "applications and proceedings thereon," include all proceedings up to and including the grant of the patent, and the subsequent filing of the complete specification: and that, therefore, all proceedings pending on the 31st Dec. last, are to be proceeded with as if no new Act had been passed, save where it is otherwise expressly provided. Such applications are not, therefore, entitled to be referred to an examiner, but once the proceedings are completed and the specification filed, then it seems the present Act governs such patents. This view is taken by the Patent Office, as in their Instructions they state that all applications under the Acts of 1852—3 must be completed in

accordance with their provisions up to the stage of filing the final specifications (Patents Instructions, 17).

The second question that arises, is the amount of ^{Fees.} fees payable in order to obtain a patent. If the words "applications for patents and proceedings thereon" are wide enough to cover fees as well as procedure, then the fees are governed by the old law: if not, then inventors under sub-sect. (3), above quoted, are entitled to the benefit of the Act. It seems more reasonable to hold that the fees and procedure go together. In order to obtain a patent, the applicant under the Act of 1852, is required to make seven applications, and four payments: under the present Act, he has only to apply twice, and make two payments. Had it been the intention of the legislature to give the benefit of the new rules as to fees to applications pending, special provision would have been made in view of the changes in procedure. This leads to a consideration of the ^{Fees after} third question, viz., what fees are payable on such ^{grant.} patents (*i.e.*, patents granted on applications pending on 31st Dec. 1883), after grant.

On the principles above laid down, the answer is: that once a patent be granted, whether on an application made before or after the commencement of the Act, then all the provisions of the Act apply, and that, therefore, the fees may be paid by instalments.

The Patent Office takes a different view. In their Instructions, they say:—

17. "The fees to be paid upon applications made prior to the 1st of January 1884, are :—

- (a.) The seventh year's payment, which under the conditions of Letters Patent is payable before the end of the seventh year, must be paid as heretofore in one sum of £100.
- (b.) The payments, which under the condition of the Letters Patent are payable before the end of the third year (1884), are, by the Act of 1883, made payable before the end of the fourth year (1885); the fee may be paid either in one sum or by annual payments (*see* Schedule of Fees)."

They permit the fee of £50 to be paid by instalments : but require the fee of £100 to be paid in one sum. It is not quite clear whether the £50 if paid by instalments is required to be paid before the end of the 4th year. The Schedule of Fees only speaks of the 1st instalment being so paid. The reason assigned for this view of the Act seems to be that the letters patent must be in the form prescribed by the Act of 1852, and one of the conditions of the grant is the payment of the fees before the end of the 4th and 7th years respectively. But the Patent Office admits that the Act controls the letters patent, in so far as the first payment may be made before the end of the 4th year, instead of the 3rd year, as required by the grant, and there seems to be no reason why the same principle should not apply to annual payments. It is submitted that once the patent be granted, and the

complete specification filed, the provisions of the Act relating to annual payments apply, and that the letters patent must be read as subject to such provisions. All difficulty would be avoided by the Board of Trade issuing a new form of letters patent for these cases, as they are authorised to do under sect. 101.

In the memorandum issued with the original draft of the Bill, the alterations made by the Act as to the steps necessary in order to obtain a patent were referred to as follows :—

The appli-
cation.
See p. 4.

“ Under the existing Acts it is necessary for an intending patentee or his agent to apply personally at the Patent Office at least seven times, and make four separate payments, using four documents for the application.

“ By this Bill [Act] an applicant or his agent will only have to call twice at the Patent Office, to use three documents, and to make two payments ; but applicants may, if they please, transact their business entirely by post, and thus avoid either personal attendance at the Office or the payment of agency fees. This will be best illustrated by the following tabular comparison :—

INTRODUCTION.

KEY TO PROCEDURE ON AN UNOPPOSED APPLICATION,
WITH PROVISIONAL SPECIFICATION.*(i.) *By Applicant or his Agent.*

Under existing Acts.	Under Bill [recent Act].
<ol style="list-style-type: none"> 1. Petition, Declaration, and Provisional Specification left at Patent Office. 2. Call for Certificate of allowance of Provisional Protection. 3. Notice to proceed given. 4. Call for Certificate of notice to proceed. 5. Warrant and Seal bespoken and paid for. 6. Call for Patent. 7. Specification filed. 	<ol style="list-style-type: none"> 1. Declaration and Provisional Specification left at or sent by post to Patent Office. Cl. or s. 5. 2. Complete Specification, with fee for sealing Patent, left at or sent by post to Patent Office. Cl. or s. 8.

(ii.) *By Patent Office.*

Under existing Acts.	Under Bill
<ol style="list-style-type: none"> 1. Provisional documents entered in Register. 2. Application advertised in Journal. 3. Provisional documents sent to Law Officer. 4. Provisional protection allowed by Law Officer. 5. Provisional protection advertised. 6. Notice to proceed advertised. 7. Provisional documents again sent to Law Officer. 8. Law Officer's fiat for Warrant received. 9. Warrant sent to Law Officer for signature. 10. Warrant received from Law Officer. 11. Patent prepared and sealed. 	<ol style="list-style-type: none"> 1. Provisional documents entered in Register. 2. Provisional documents referred to Examiner at Patent Office. Cl. or s. 6. 3. Notification of acceptance sent to Applicant or Agent by post. 4. Complete Specification referred to Examiner. Cl. or s. 9. 5. Advertisement of acceptance of Complete Specification. Cl. or s. 10. 6. Notification of acceptance of Complete Specification sent to Applicant or Agent by post. 7. Patent prepared and sealed. Cl. or s. 12. 8. Patent sent to Applicant or Agent by post.

* As the majority of applications for letters patent are by way of provisional protection, these observations refer to applications with Provisional Specifications in a correct form.

“It is also proposed to sell the new application and specification forms ready stamped at the Patent Office, or to send them by post at the price of the fee, *i. e.*, no charge to be made for the blank form itself. Only two stamped forms will be necessary, one a £1 declaration form, and another a £3 form, for the complete specification. The Inland Revenue Department will also arrange to sell these stamps at post offices in the principal commercial centres of the kingdom. At present, persons residing in the country must either employ an agent in London to obtain the stamped forms, or obtain them through a stamp office from the Inland Revenue Department by post.”

“The fees payable at present in order to obtain a patent amount to £25, with further payments of £50 before the expiration of the third year and £100 before the expiration of the seventh year of the patent. Under the Bill [Act] a patent will be obtainable for £4, and, while the amount of the further payments remains unaltered, the payment of the £50 is postponed to the fourth year; so that a four years' patent will only cost £4.”

The first step to be taken by an intending patentee is to obtain a form of application. This may be obtained at any of the places mentioned in the Patents Instructions on payment of £1. After filling it in the applicant is required to sign it himself, and, inasmuch as it contains a declaration, such signature ought to be made before an officer duly authorised to administer declarations. It may be made before a commissioner or a notary (*Law Times*, Feb. 9th, 1884), but, if made before a Justice

of the Peace no extra stamp will be required, and the delay necessary to obtain such stamp will be avoided. Though the application may be accompanied by the complete specification, yet inventors will find it their interest to send merely a provisional specification. By adopting the latter course, not only will they gain time to perfect their inventions, but they will avoid the risk of losing the £3 paid for the complete specification in case their application is refused.

Examina-
tion of the
application.
See p. 9.

The application is referred to an expert, called in the Act an Examiner, to report thereon. It is not his duty to say if the invention is the proper subject-matter for a patent. His duties are restricted to ascertaining if the invention is fairly described, and if the application is properly prepared, and if the title sufficiently indicates the subject-matter. The object of the examination would thus seem to be,—to render assistance to inventors in the framing of their specifications, but not in any way to relieve them of the legal duty of sufficiently describing their inventions. In other words, whilst the Comptroller, acting on the report of the Examiner, will see that the application is prepared in the prescribed manner, and will require the specification on the face of it to describe an alleged invention, the object of which is stated in the title, yet the acceptance of the application is not conclusive as to the sufficiency of the specification. This seems to have been the view of those in charge of the Bill when passing through the House of Commons. In the debate on the second reading Mr. Davey said :—“He did not understand that the right hon. gentleman intended

by his Bill to make the examination conclusive, but that the only object was to assist the parties to put their patents into a proper form," and Mr. Chamberlain did not dissent from this statement. It has been suggested that the recital in the new form of a patent, viz., that the inventor has "by and in his complete specification, particularly described the nature of his invention," is strong evidence that the examination of the specifications is to be conclusive. The truer view is rather that this recital is merely a recital of the fact that a complete specification has been lodged before sealing as required by the Act, and for this reason, viz., the recital does not cover all the requirements of the Act as regards the complete specification. By sect. 5, sub-sect. (4), the complete specification must not merely "particularly describe the nature of the invention," as the recital would seem to require, but must also "ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required." A specification that fulfilled the requirements of the recital would not necessarily fulfil the requirements of this section.

The Comptroller may require the application to be amended subject to an appeal to the law officer. The working of the Act in regard to these and the other appeals to the law officer will be regarded with some interest. The duties of the law officers are so varied that it is doubtful how far these appeals will give satisfaction. If the appeals are numerous, it is difficult to see how the law officers can find time to deal thoroughly with them, unless they act on the

Amend-
ment or
acceptance
of applica-
tion.
See p. 10.

acts committed after the publication of the complete specification.

Registration.
See p. 35.

On the sealing of the patent, the name of the patentee will be entered in the register. All persons who obtain subsequently any rights in the patent, *e.g.*, by way of licence or mortgage, or under any agreement, ought at once to register the document in question, inasmuch as by sect. 87, the registered proprietor has, subject to any rights appearing, from the register to be vested in other persons, and to any existing equities, "power absolutely to assign, grant licences as to, or otherwise deal with the same."

Unregistered assignee.
See p. 113.

Under the Patent Law Amendment Act of 1852, it was held that an unregistered assignee could not bring an action for infringement. The rights of registered proprietors are not defined in the present Act in the same words as in the Act of 1852. And it would seem from the wording of sect. 87, that registration is no longer necessary as a condition to an assignee suing in respect of an infringement, though the point is by no means clear.

Amendment.
See pp 27, 127.

Important changes have been introduced in regard to the powers of amendment given to a patentee. Clerical errors in or in connection with an application may be amended by the Comptroller on payment of a nominal fee. By a curious oversight, no express provision seems to have been made for the correction of clerical errors in the letters patent themselves; as sect. 91 and Rule 18 do not seem to apply after sealing.

The specification may be amended before sealing, after sealing, or even during action. The leave of the Comptroller must be obtained in each case, and

where an action is pending, the permission of the Court is required to apply for such leave. The request for amendment is advertised, and any person may oppose. If leave be refused, the applicant may appeal to the law officer. In no case is an amendment to be allowed which would make the amended specification claim an invention substantially different from that in the original specification, but no objection can afterwards be taken as to the amendment exceeding that which the Act allows, inasmuch as the leave to amend is conclusive as to the right to amend (sect. 18).

As to amendment during action, it is not likely that patentees will often avail themselves of the provisions of the Act, inasmuch as they cannot recover damages in the action, save where they satisfy the court that the claim was framed in good faith, and with reasonable skill and knowledge.

How far the attempt to define the principles on which the Judicial Committee of the Privy Council are to act in considering applications for the extension of a patent, will result in more favourable decisions, as far as the applicants are concerned, remains to be seen. Looking at the speech of Mr. Chamberlain on the second reading of the Bill (quoted at p. 39), the object of the framers of the Act in defining such principles seems to have been to alter the rule that where "the inventor had made a sum of £10,000, no application for an extension of the patent should be granted," and to lay down the principle that regard should be had to the profits of the "patentee as such, and not as manufacturer." As regards the amount of remuneration to be

Extension.
See p. 37.

allowed, no special direction is given in sect. 25, the widest discretion is still left to the Judicial Committee, as the clause ends by the very general direction that they are to have regard to the circumstances of the case. As to the profits of the patentee as manufacturer, though the clause may tend to prevent the Judicial Committee taking manufacturer's profit into account, as they have done in the more recent cases, it does not, nor could it, meet the difficulty that patentees are under in separating profits as patentee from profits as manufacturer.

As a rule, patentees do not from the first contemplate the extension of a patent. If they keep accounts, and often they do not, they are usually kept in such a manner as to render it almost impossible to present them in a proper form, much less to distinguish between profits derived as patentee and profits derived as manufacturer. The words of Lord Chelmsford in *Betts' Patent* (a), ought never to be forgotten by patentees. "There can be no difficulty in the patentee beginning from the first to keep an account distinct and separate from any other business in which he may happen to be engaged. He knows perfectly well that if his invention is of public utility, and he has not been adequately remunerated, he will have a claim for an extension of the original term of his patent. It is not, therefore, too much to expect that he should be prepared when the necessity arises to give the clearest evidence of everything which has been paid and received on account of his patent."

(a) 1 Moo. P. C. N. S. 91 ; quoted with approval in *Adair's Patents*, L. R. 6, App. Cas. 176.

In order to obtain an extension of a patent for more than seven years, it is no longer incumbent on the applicant to shew that a prolongation for such an extra time is necessary to reimburse and to remunerate him, the committee are authorised to extend a patent for 14 years in "exceptional cases," as the extension may be made subject to "any restriction, conditions and provisions that the Judicial Committee may think fit," it would be within the power of Judicial Committee to require that the Crown should be at liberty to use the patent without payment, notwithstanding the new proviso of sect. 17, that patents are to bind the Crown. The provision of sect. 25 of the Patent Law Amendment Act, 1852, that where an invention had been patented abroad before being patented in this country, the English patent should cease on the determination of the foreign patent has not been re-enacted, but doubtless the Judicial Committee will still consider, as an element in the case, the existence of foreign patents for the same invention.

Legal proceedings in connection with patents are simplified. An action for infringement is to be tried without a jury unless otherwise ordered, and either party may call in an assessor. The certificate of validity may be obtained after trial. Revocation takes place by petition to the High Court (sect. 26), and in the case of an action against a patentee who threatens legal proceedings against those who purchase articles which he alleges to be an infringement, the vendor of such articles is not required to establish mala fides on part of the patentee (sect. 32).

Legal proceedings.
See p. 47.

The chief remaining alterations made by the Act are as follows :—

1. Limitation of patent to one invention made statutory ; with a proviso that it shall not be competent in an action or other proceeding to object to a patent on the ground that it comprises more than one invention (sect. 33).
2. Extension of provisional protection from six to fifteen months, or from application to sealing of patent (sect. 14).
3. Extension of first term of a patent from three to four years. The duration of patents will continue to be 14 years (sect. 17).
4. Specification to contain distinct statement of claims (sect. 5).
5. Deposit of complete specification before the grant of the patent and within nine months from date of application (sect. 8).
6. Appointment of Comptroller General, and of Examiners, (*a.*) to examine applications for the purpose of seeing that the application is properly prepared and that nature of invention is fairly described, (*b.*) to compare complete specifications with provisional ones (sects. 9, 83).
7. Appeal from Comptroller to Law Officer (sects. 7, 9, 18).
8. Protection of prior applicants (sects. 7, 10, 13).
9. Power to grant patent to personal representatives of inventor (sect. 34), or of applicant (sect. 12).

10. Patent to be sealed with seal of Patent Office.
(sect. 12).
11. Reduction of fees: times of payment: and powers to enlarge times (sects. 24, 17).
12. Extension of powers of amendment in regard to clerical errors (sect. 99), and substantial alterations (sect. 18).
13. Amendment during action with power to give amendment in evidence subject to restriction on damages (sect. 19).
14. Calling in of an assessor by either party or Court of Appeal or Judicial Committee: Action to be tried without a jury unless otherwise ordered (sect. 28).
15. Abolition of proceedings by *scire facias* to revoke a patent: revocation to be by petition (sect. 26).
16. Principles on which patent is to be extended (sect. 25).
17. Crown to be bound by patent (sect. 27).
18. Power of Board of Trade to compel grant of licences (sect. 22).
19. Patent Office establishes with seal (sects. 82, 84).
20. New register established (sect. 23).
21. Publication of Illustrated Journal &c. (sect. 40).
22. Patent Museum transferred to Department of Science and Art: power to require models on payment (sects. 41, 42).
23. Power to join International Union (sect. 103).

DESIGNS.

Changes in
the law.

The old distinction between useful and ornamental designs is abolished and any novel design whether applicable for pattern, shape, configuration or for ornament is entitled to registration. The registration of designs for sculpture is abolished. Only three objects a year, Mr. Chamberlain said on moving the second reading of the bill, had been registered in the class for sculpture on the average of the last five or six years, and on conferring with the leading sculptors, he found that they did not care for it. Provisional registration is also abolished. The object of provisional registration was to enable a design to be submitted to buyers to see whether it was saleable before the inventor proceeded to complete registration. It is now deemed no longer necessary, as the applicant for registration is only required to leave with his application one sketch of the design. (Designs Instructions, 4.) The certificate of registration will not, however, be issued to him until three exact drawings or specimens have been sent, and in all cases three exact specimens must be furnished to the Comptroller before sale and delivery of any goods to which the design is applied (sect. 51).

For the old varying term of registration, one uniform term of four years has been substituted for all designs.

Assign-
ment.

No provision is made as to the assignment of a design. Under the 5 & 6 Vic. c. 100 and 6 & 7 Vic. c. 65, the transfer of an ornamental design was required to be in writing. On the form of request to enter a subsequent proprietor (Designs Forms,

Form K), it is stated the particulars of the assignment are to be set out "*e.g.* by deed dated, &c." but this is evidently insufficient to require the assignment to be by deed. See remarks as to a similar omission in the case of trade marks, *infra*.

TRADE MARKS.

The Trade Marks Act, 1875 (as well as its amending Acts) is repealed, but most of its provisions have been re-enacted. The chief alteration introduced relates to the definition of a trade mark. The definition has been extended so as to include, fancy words, brands, and single letters in case of old marks. Statutory permission is given to register as an addition to a trade mark, marks common to the trade, provided the right to any exclusive use of such common marks be disclaimed (sect. 74). Statutory provision is also made for registration of a series of marks (sect. 66).

Before applying for registration of a trade mark, Searches. the intending applicant should make a search at the Trade Marks Branch of the Patent Office, or at the Manchester Office, with a view of ascertaining whether the proposed mark is already registered, or whether from its being calculated to deceive by resemblance to other marks already on record, it would be refused registration under sect. 72. The fee for making a search is 1s. for each quarter of an hour. If the applicant desires the search to be made by the Comptroller, he is required to make a formal request for registration (fee 5s.) of the mark (Trade

Marks Instructions, 7). If the mark has not been already registered, then formal application may be made. A declaration is no longer required from the applicant, and an agent may therefore apply on his behalf, provided he be authorised to act in writing signed by the applicant (Instructions, 12).

Appeal.

If the application is refused, an appeal now lies to the Board of Trade, and not to the Court, though the Board of Trade may refer the matter to the Court (sect. 62). In order to compel an applicant to proceed with due diligence, it is enacted that an application not completed within 12 months, owing to his default, is to be deemed abandoned.

Assign-
ment.

No provision has been made as to the manner in which a trade mark is to be assigned in connection with the goodwill. The Act is silent on the point. Nothing is to be found in the Rules except the marginal note on the form of application to enter an assignee's name on the register (Trade Marks Forms, Form K), which requires the applicant "if entitled by assignment to state the particulars thereof, *e.g.*, by deed, &c." This does not seem sufficient to require an assignment to be by deed. It is extremely doubtful how far power is given by sect. 101 to the Board of Trade to prescribe a rule on such a matter, as the only part of the section applicable is that which enables the Board to make rules "for regulating the practice of registration" under the Act.

Sheffield
marks.

Several alterations have been made in the rules relating to Sheffield marks. Notice of the application for registration of an assigned mark is now given to the Comptroller by the Cutlers' Company, instead

of notice of an application for assignment of a mark, *i.e.*, the Cutlers' Company first assign a mark and then the assignee applies to them to have it registered. Such registration cannot take place if the Comptroller objects. After registration by the Cutlers' Company, the mark is registered by the Comptroller.

THE
PATENTS, DESIGNS,
AND
TRADE MARKS ACT, 1883.

46 & 47 VICT. c. 57.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks. **Sects**
1, 2.

[25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

PRELIMINARY.

1. This Act may be cited as the Patents, Designs, Short title.
and Trade Marks Act, 1883.

2. This Act is divided into parts, as follows :—

Part I.—PRELIMINARY.

Part II.—PATENTS.

Part III.—DESIGNS.

Part IV.—TRADE MARKS.

PART V.—GENERAL.

Division of
Act into
parts.

Sects. **3.** This Act, except where it is otherwise ex-
3—5. pressed, shall commence from and immediately after
Commence- the thirty-first day of December, one thousand eight
ment of hundred and eighty-three.
Act.

As to its effects on applications for patents made before this date, see sect. 45.

PART II.

PATENTS.

Application for and Grant of Patents.

4. (1.) Any person (a), whether a British subject or not, may make an application for a patent.

Persons
entitled to
apply for
patent.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

The personal representative of an inventor who dies without applying for a patent (s. 34), or dies after application but before grant (s. 12), may obtain the patent for the invention.

There is nothing to prevent a woman, married or single, or an infant, from applying for a patent—no other person can apply on their behalf, as such person would not be the first inventor. The person applying must, in order to obtain a valid patent, be the first and true inventor of an invention within the meaning of sect. 6 of the Statute of Monopolies, otherwise the patent, if granted, will be void. See definition of a “Patent,” and “Invention,” in sect. 46.

Married
women.
Infant.

Where joint application is made under this section by two or more persons, it will be sufficient if the declaration attached to the application be taken by one or more of the applicants (s. 5, sub-s. 2).

Joint ap-
plication.

A body corporate may apply for a patent (s. 117), and will be registered as proprietor by its corporate name (Patents Rules, 70).

Body
corporate.

The application must be made in the English language (Patents Instructions, 1).

Applica-

5. (1.) An application for a patent must be made

(a) Person includes body corporate, s. 117.

in the form set forth in the First Schedule to this Act (α), or in such other form as may be from time to time prescribed (β); and must be left at, or sent by post to, the patent office in the prescribed manner (γ). Sect. 5.
tion and
specifica-
tion.

(2.) An application must contain a declaration (δ) to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4.) A complete specification, whether left on application (ε) or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

The word "application" is used differently in different sections of the Act. In this section it means the form of application contained in the Patents Forms; whilst in other sections, such as sect. 7, sub-sect. 4, it includes the specification left with such form of application. "Applica-
tion."

The applicant is required to lodge, (1) a formal application; (2) a provisional specification; or (3) a complete specification.

The form of application (ζ) will be found in the Patents Forms (A, A1). It must contain a declaration as to its The formal
applica-
tion.

(α) New Forms have been prescribed by Patents Rules, 5, 6.

(β) For Forms, see Patents Forms, A, A1. As to size of documents, see Patents Rules, 9, 10.

(γ) Patents Rules, 19.

(δ) See Patents Forms, A, A1.

(ε) Patents Rules, 26.

(ζ) For list of places where Stamped Forms may be obtained, see Patents Instructions.

Sect. 5. truth, made before a Justice of the Peace or Commissioner (a), if made within the United Kingdom, or before a British Consular Officer or other officer duly authorised, if made abroad, under the provisions of the Statutory Declarations Act, 1835 (β). By sect. 21 of that Act, any person who shall wilfully and corruptly make and subscribe any declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

The form requires a 1*l.* stamp, and may be either left at the Patent Office or sent through the post by prepaid letter. In the latter case it will be deemed to have been made at the time when the letter would be delivered in the ordinary course of post (s. 97; Patents Rules, 19).

The formal application must be accompanied by either a provisional specification or a complete specification. The former requires no stamp; the latter requires a stamp of 3*l.* The refusal of an application accompanied by a complete specification will therefore entail a loss of 3*l.*, and the acceptance, the immediate publication of the complete specification (Patents Rules, 26).

The lodging of the application will give the applicant priority over a subsequent applicant for the same invention (sect. 7, sub-sect. 6), and the patent, if granted, will be sealed as of the day of application (s. 13). No action can be maintained for any act of infringement committed before the publication of the complete specification (s. 13).

Applications will be numbered in the order in which they are received at the Patent Office (Patents Rules, 22).

Provisional
specifica-
tion.

The object of the provisional specification is to describe the "nature of the invention." It need not contain all the minute directions necessary for carrying the invention into effect, or to enable a workman of ordinary skill to make it. It is sufficient though it discloses the invention in its rough state, if it shows what the invention really is. See as to the provisional specification the remarks of the late Master of the Rolls in *Stoner v. Todd*, L. R. 4 Ch. D. 58; and of Lord Blackburn in *Bailey v. Roberton*, L. R. 3 App. Cas. 1073. Also *In re Newall and Elliott*, 4 C. B. N. S. 269; *Newall v. Elliott*, 10 Jur. N. S. 954; *Penn v. Bibby*, L. R. 2 Ch. 127.

It must commence with a title (sub-sect. 5), but a claim is not necessary.

(a) If made before a Justice no additional stamp is required, but if made before a Commissioner an additional stamp of 2*s.* 6*d.* is necessary, obtained by leaving

form with the Postmaster to be stamped (Patents Instructions, 6.)

(β) The declaration must be signed by the applicant himself.

The title discloses the object of the invention. It is **Sect. 5.** part of the specification. The title must not describe the invention in wider terms than are found in the remainder of the specification. Where the title is wider than the rest of the specification, the patent is void. On this ground the patent was held void in *R. v. Else*, 1 Web. 76; *Househill Company v. Neilson*, *ib.* 578; *Cochrane v. Smethurst*, Dav. P. C. 354; *Campion v. Benyon*, 3 B. & B. 5; *Felton v. Greaves*, 3 C. & P. 611; *Croll v. Edge*, 9 C. B. 479; cases occurring previous to the Patent Law Amendment Act, 1852. In the following cases the variation was held not to avoid the patent: *Sturtz v. De la Rue*, 5 Russ. 322; *Neilson v. Harford*, 1 Web. 331; *Nickels v. Haslam*, 7 M. & G. 278; *Beard v. Egerton*, 3 C. B. 97; *R. v. Mill*, 10 C. B. 379—previous to the Patent Law Amendment Act, 1852; and in *Crossley v. Potter*, Macr. P. C. 240; *Patent Bottle Envelope Co. v. Seymer*, 5 C. B. N. S. 164; *Wright v. Hitchcock*, L. R. 5 Ex. 37—under the Patent Law Amendment Act, 1852.

TITLE.

Variance of title and specification.

The title may suffice to narrow down the claim in the specification, and so support a patent otherwise void (*Newton v. Vaucher*, 6 Ex. 866; *Oxley v. Holden*, 8 C. B. N. S. 666).

Title may narrow claim.

The probability of a patent being declared void on account of the largeness of the title will henceforth be much less than formerly, inasmuch as the examiner under sect. 7, is to examine and report whether the title sufficiently indicates the subject-matter of the invention.

Title under present Act.

The complete specification must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed. "It is, in a sense, supplemental to the provisional specification, not going beyond it or varying from it, as to the nature of the invention, but conveying additional information which may have been acquired during the currency of the provisional specification" (*Chelmsford, L.C.*, in *Penn v. Bibby*, L. R. 2 Ch. 134).

THE COMPLETE SPECIFICATION.

It must, like the provisional specification, begin with a title, and, unlike the provisional specification, end with a claim. It requires a 3*l.* stamp.

The more important leading principles relating to the sufficiency of the complete specification are—

1. The specification must be intelligible to ordinary workmen in the trade or business to which the invention is applicable, and who possess some knowledge of the

1. Must be intelligible to ordinary

- Sect. 5.** subject-matter (*Plimpton v. Malcolmson*, L. R. 3 Ch. D. 531). See further as to whom the specification must be intelligible, *Neilson v. Harford*, 1 Web. 314; *The Househill Co. v. Neilson*, *ib.* 676. On this principle the patent has been held void where there was—
- workman in the trade.
- (a) No material part of process to be omitted.
- (a.) An omission of a material part of the process, such as not stating, that tallow was used in the manufacture of steel trusses (*Liardet v. Johnson*, 1 Web. 53); that aquafortis was used to obtain the effect more rapidly (*Wood v. Zimmer*, *ib.* 82); how the solution was to be applied (*Bailey v. Robertson*, H. L. 3 App. Cas. 1055: in what place a hole for admission of air into a lamp burner was to be made (*Hinks v. Safety Lighting Co.*, L. R. 4 Ch. D. 607); or that it was necessary to apply heat to produce the colour in question (*Simpson v. Holliday*, L. R. 1 H. L. 315).
- (b) Not to contain any misleading representation in a material particular.
- (b.) Any misleading representation in a material particular, such as that certain materials will answer which will not (*Turner v. Winter*, 1 Web. 77; *Crompton v. Ibbotson*, *ib.* 83; *Wegmann v. Corcoran*, 13 Ch. D. 65); that an unessential ingredient is essential (*Lewis v. Marling*, 1 Web. 495); that form of a vessel is immaterial when it is material (*Neilson v. Harford*, 8 M. & W. 806).
- (c) Nor any ambiguous statement.
- (c.) Any ambiguous statement, *e. g.*, as to proportion of ingredients to be taken (*Muntz v. Foster*, 2 Web. 109); but it is not essential for the patentee to limit himself to the precise proportions so long as he states the best proportions (*Patent Type Founding Co. v. Richards*, 1 John. Rep. 381); or as to the uncertainty of the material to be used (*Sturtz v. De la Rue*, 1 Web. 83). As to the meaning of the words "or other suitable material," see *Ralston v. Smith*, 11 H. L. Cas. 248.
2. Specification to distinguish new from old, otherwise patent may be held to claim what is old.
2. The specification should, where necessary, carefully distinguish what is new from what is old, otherwise the patent may be held to include what is old and consequently void for want of novelty. This rule applies chiefly to patents for improvements in existing patents (*Crane v. Price*, 4 M. & G. 580; *Holmes v. L. & N.-W. Ry Co.*, Macr. P. C. 13; *Parkes v. Stevens*, L. R. 5 Ch. 36); and for improvements in old machines (*Bovill v.*

Moore, Dav. P. C. 361; *Dangerfield v. Jones*, 13 L. J. Rep. N. S. 142.) The principle will not apply to things incidentally referred to and universally known to be old (*Tetley v. Easton*, Macr. P. C. 82), or to things which manifestly form no part of the invention (*Lister v. Leather*, 8 E. & B. 1004). Sect. 5.

In the case of a combination of things themselves not new it is sufficient if the claim be restricted to the combination only (*Newall v. Elliott*, 10 Jur. N. S. 954).

The disclaimer of what is old has hitherto been generally effected in the claim, and the practice will probably continue. As to disclaiming what is old by means of drawings, see *Daw v. Eley*, L. R. 3 Eq. 500. Every complete specification must now contain a claim of what the invention really is (see note below on Claim).

3. The complete specification must disclose the most beneficial way known to the patentee for exercising the invention, otherwise the patent will be void as a fraud on the public. Hence the patent will be void where a material not referred to in the specification is added by the patentee in the manufacture (*Wood v. Zimmer*, 1 Web. 82), or where the patentee can carry it out with cheaper materials (*Turner v. Winter*, 1 Web. 81); or where the easiest method of obtaining the ingredients has not been pointed out (*Savory v. Price*, 1 Ry. & Mo. 1.) The inventor should therefore disclose all improvements or discoveries made up to the lodging of the complete specification (*Crossley v. Beverley*, 1 Web. 117). 3. The most beneficial way of exercising the invention must be disclosed.

4. The complete specification, including Title and Claim, ought not to vary materially from the provisional specification, so as to practically claim a different invention. The comparison of the two specifications by the examiner under sect. 9 will tend greatly to prevent patents being upset on the ground of variance between the provisional and complete specifications. The Act contains no provision making the report of the examiner conclusive, and the objection of variance may therefore still be taken (see note to sect. 9). 4. Complete specification must not vary from provisional specification.

As to what amount of variance will invalidate a patent, see *Bailey v. Robertson*, H. L. 3 App. Cas. 1055, where the patent was held void, and *Penn v. Bibby*, L. R. 2 Ch. 127; *Thomas v. Welch*, L. R. 1 C. P. 192; and *Wright v. Hitchcock*, L. R. 5 Ex. 37, where the variation was held not to be material.

Any part of the provisional specification may be omitted in the complete specification if there be no fraud

Sect. 5. and the effect of the remainder is not thereby altered (*Thomas v. Welch*, L. R. 1 C. P. 192), but the provisional specification cannot be called in to enlarge the complete specification (*Mackelcan v. Rennie*, 13 C. B. N. S. 52).

**THE
CLAIM.**

Hitherto a claim, though usual, has not been necessary, its chief use being rather to disclaim what was old than to claim what was new (*Hinks v. Safety Lighting Co.*, L. R. 4 Ch. D. 607 ; *Dudgeon v. Thomson*, L. R. 3 App. Cas. 34 ; *Plimpton v. Spiller*, L. R. 6 Ch. D. 426). For the future the complete specification "must end with a distinct statement of the invention claimed."

The claim, like the body of the specification, ought not to exceed the title.

DRAWINGS.

The specification, whether provisional or complete, must now be accompanied by drawings if required (sub-sects. (3), (4)). Hitherto drawings might be annexed to a specification, but in no case was this compulsory.

In what cases will drawings be "required" ? Evidently in all cases where the specification would not, without drawings, enable a workman of ordinary skill to carry out the patent.

The drawings may, however, serve other purposes and be useful even where not essential, *e.g.*, they may explain an ambiguity in the specification (*Hastings v. Brown*, 1 E. & B. 450) ; or restrict a specification which otherwise is too general (*Daw v. Eley*, L. R. 3 Eq. 500).

The absence of a scale attached to drawings is an imperfection, as a scale in some cases may be of essential importance (*Morton v. Middleton*, 1 Cr. S. 3rd Ser. 718) ; but they will suffice if they enable a workman of competent skill to make the machine (*Bovill v. Moore*, Dav. P. C. 369).

**Size of
original
drawings.**

The drawings are now to be made on half sheets or sheets of imperial drawing paper, to be within a borderline of 19 inches by 12 inches, or 27 inches by 19 inches, with a margin of half an inch all round (Patents Rules, 28, and Instructions, 12).

**Copy of
drawings.**

A copy of the drawings must also be left. This copy must be on *rolled* imperial drawing paper or thin Bristol board, of the same size as the original drawings. No colour must be used. All lines are required to be in Indian black ink. The copy must be delivered perfectly flat or rolled upon a roller (see further Patents Rules, 29).

If the application be accepted, the applicant has to furnish a drawing illustrative of the features of novelty constituting the invention, covering a space not more

than 16 inches square. It must be accompanied by a concise explanatory statement (Patents Rules, 31, and Instructions, 13). Sects. 6, 7.

6. The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described and the application (α), specification (β) and drawings (γ) (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject matter of the invention. Reference of application to examiner.

Hitherto applications have been referred to the law officer, but his only duty seems to have been to decide if the provisional specification described the nature of the invention (Patent Law Amendment Act, 1852, s. 8). This Act, as originally drawn, empowered the examiner to report whether the invention was the subject-matter for a patent. That part of the section was struck out when the bill was in committee, and the report of the examiner is restricted to three things:— On what examiner reports.

1. Whether the nature of the invention is fairly described.
2. Whether the application, specification, and drawings have been prepared in the prescribed manner.
3. Whether the title sufficiently indicates the subject-matter of the invention.

The report of the examiner is not to be published or to be open to the inspection of the public. It may be produced before the law officer where there is an appeal to him from a decision of the comptroller based upon it (sect. 9, sub-sect. (5)). A Court may in certain cases allow its production (see sect. 9, sub-sect. (5)). Reports not published.

The report of an examiner is not made conclusive, but the Courts will probably be very reluctant to upset a patent on any ground as to which the examiner has reported favourably. Reports not conclusive.

7. (1.) If the examiner reports (δ) that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that Power for comptroller to refuse application or require amendment.

(α) Patents Forms, A, A1.

(β) Patents Forms, B, C.

(γ) Patents Rules, 28—30.

(δ) See preceding section.

Sect. 7. the title does not sufficiently indicate the subject matter of the invention, the comptroller may require that the application, specification, or drawings be amended before he proceeds with the application (a).

(2.) Where the comptroller requires an amendment, the applicant may appeal (β) from his decision to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the application shall be accepted.

(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the comptroller whether the specification appears to him to comprise the same invention ; and, if he reports in the affirmative, the comptroller shall give notice to the applicant that he has so reported.

(6.) Where the examiner reports in the affirmative, the comptroller may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant.

Amend-
ment of
applica-
tion.

Where the examiner's report is unfavourable as to any of the three matters to which it may relate, the comptroller may require the application to be amended. He has no power to refuse the application. Before requiring the amendment the comptroller gives fourteen

(a) After hearing applicant.
Patents Rules, 11, 14.

(β) Within fourteen days from
date of decision. For Form of

Appeal, see Patents Forms, T.
See Rules as to Appeals to Law
Officer.

days' notice to the applicant, and within five days from the time such notice would be delivered in the ordinary course of post the applicant, if he desires to be heard, must give the comptroller notice to that effect in Form T (see Patents Forms). The comptroller may require the applicant to submit a written statement, or to attend before him personally (Patents Rules, 11—13). **Sect. 7.**

If the applicant desires to appeal to the law officer against the decision of the comptroller, he must, within fourteen days from the date of the decision appealed against, file (unless time be enlarged by comptroller or law officer), in the Patent Office a notice of appeal in Form T (Patents Forms) stating the nature of the decision appealed against, and whether the appeal is from the whole or part only, and if so what part of such decision. A copy of such notice is to be sent to the Law Officer's Clerk, Room 549, Royal Courts of Justice, London. The comptroller, as soon as notice of appeal is filed, will transmit to the law officer's clerk all papers in his possession relating to the appeal. The law officer's clerk will give seven days' notice of the hearing of the appeal, though the law officer may give special leave for shorter notice. Such notice will be given to the appellant and the comptroller, and to the opponent (if any), and, where the appeal relates to two applications pending, to the prior applicant. **Appeal to law officer.**

The evidence used at hearing will be the same as that before the comptroller: but evidence may be given of matters that have come to the knowledge of either party after the date of the decision appealed against. The law officer may, however, give leave for further evidence to be filed, on special application. Such evidence is subject to the same regulations as apply to procedure before the comptroller (see Patents Rules), unless otherwise ordered. Witnesses who have made affidavits may, on application, be ordered to attend the hearing for cross-examination, a reasonable sum being tendered them for conduct money.

Costs may be ordered to be paid by any party, and if not paid within fourteen days after the amount is ascertained, an order for payment may be made by the law officer under sect. 38, which may be made a rule of Court.

All documents sent to the law officer's clerk may be sent by prepaid letter. (See Rules as to Appeals to law officer).

The acceptance of the application, where it is accom- **Notice of acceptance.**

Sect. 7. panied by a provisional specification, will give the applicant provisional protection under sect. 14, and so enable him to use and publish the invention without prejudicing the grant of the patent. If, however, he publishes the invention and it is infringed, he cannot maintain an action for infringement, the patent not having been actually granted (sect. 15).

Where a complete specification is lodged in the first instance and accepted, the applicant will be entitled to protection under sect. 15 ; but the specification will be open to inspection on advertisement of the acceptance (Patents Rules, 26).

Protection
against
subsequent
applicants.

An important alteration in Patent Law is made by sub-sects. (5) and (6). Hitherto it has been held that the filing of a prior provisional specification was not a ground for refusing to allow the filing by a second and subsequent applicant of another provisional specification relating to the same invention : and if the second applicant was the first to obtain a grant of letters patent, no patent would be granted to the first applicant (*Redgate's Application*, L. R. 4 Ch. 577).

This doctrine was questioned by Cairns, L.C., in *In re Deering's Patent*, 13 Ch. D. 393, where leave was given to seal a second patent, although a patent for a similar invention had already been granted, both applications having been made on the same day. These sub-sections in such a case empower the comptroller to refuse to grant a patent to the second applicant. The comptroller is to act on the report of the examiner that the title of the specification lodged with the second application is the "same or similar" to the title of the prior specification. It might seem at first sight as if the second applicant could defeat the intention of these sub-sections by affixing a different title to his specification, but it must be remembered that under sect. 6 the examiner has to report, in every case, whether the title fairly describes the invention. The comptroller can require the title to be amended, and then the identity or similarity of the titles of different applications will become apparent.

Before deciding the comptroller is required to give both applicants an opportunity of being heard (Patents Rules, 15). See note above on Amendment of application.

The prior applicant is also protected under sect. 11, as he may on the advertisement of the complete specification of the subsequent applicant, oppose the sealing of the patent.

The prior applicant is still further protected by sect. 13, which practically enacts that if the subsequent applicant obtains the sealing of the patent, that, is not to prevent the sealing of the patent to the prior applicant.

**Sects.
7, 8.**

8. (1.) If the applicant does not leave a complete specification with his application (a), he may leave it at any subsequent time within nine months from the date of application.

Time for leaving complete specification.

(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned.

By leaving a complete specification with the application, the applicant will obtain protection under sect. 15 as soon as it is accepted. The disadvantages of adopting this course are, that the applicant is precluded from making further experiments or otherwise improving the invention, and that in case the application be refused the 3*l*. additional fee paid will be lost. The refusal of a provisional specification only entails the loss of a 1*l*. fee.

If the complete specification be not lodged within nine months the application which includes the provisional specification will be deemed to be abandoned. In *Oxley v. Holden*, 8 C. B. N. S. 666, it was held, that the abandonment of a provisional specification did not make such specification public, so as to prevent the same or another person from lodging another application and obtaining a patent for the same invention, inasmuch as the provisional specification only became public when published by the Patent Office under sect. 2 of the Patent Law Amendment Act, 1852. Subject to the provisions of sect. 7, sub-sects. (5) and (6), the same principle would seem to apply to provisional specifications abandoned under this Act, as a specification, whether provisional or complete, is not published until the acceptance of the complete specification (sect. 10). Where, however, an application is made for the same patent, it would seem to be the duty of the examiner to whom it is referred to report to the comptroller that it comprises the same invention as that contained in the previous application. But see sect. 9, sub-sect. (4), as to

(a) See s. 5, sub-s. (2)

Sects. 8, 9. applications becoming void if the complete specification be not accepted within twelve months.

After obtaining provisional protection a patentee may "publish" as well as "use" the invention. Where it is "published" and afterwards abandoned, such publication would be fatal to a second application.

Compari-
son of pro-
visional
and com-
plete speci-
fication.

9. (1.) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the comptroller may refuse (α) to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal (β) to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted (γ).

(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall

(α) But only after hearing applicant. Patents Rules, 11—14.

(β) Within fourteen days of comptroller's decision. Appeal

Rules, 5. For Form, see Patents Forms, T.

(γ) See Rules as to Appeals to law officers.

not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act, unless the Court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed. Sect. 9.

The examiner is to report—

(1.) Whether the specification has been prepared in the prescribed manner. As to this see note to sect. 5, sub-sect. (4). Report of examiner on complete specification.

(2.) Whether the invention described in the complete specification is substantially the same as that described in the provisional specification. This provision will prove a most useful one to patentees. Any substantial variation between the two specifications will invalidate the patent (see note to sect. 5). The favourable report of the examiner is not made conclusive as to the absence of any material variation, and whilst the probability of a patent being upset by the allegation of material variation is greatly diminished, it still remains open to defendants to take such an objection.

The report of the examiner is not to be published. It may be used on appeal to the law officer, but it is not liable to production or inspection unless by order of the Court or officer having power to order discovery in such legal proceedings. In proceedings before the Queen's Bench Division of the High Court; see as to the person to whom to apply for such certificate, R. S. C. 1883, Ord. XXXI. Not to be published.

The practice on appeals to the law officer is the same as on appeals from the decision of the comptroller requiring amendment of an application (see note to sect. 7). Appeal to law officer.

When there is an appeal pending against a refusal to accept a complete specification the law officer has power to direct when the patent shall be sealed (s. 12, sub-s. (3)). Time for acceptance.

The fact of an application becoming void by its non-acceptance within twelve months does not make it public, and the same principles that apply to applications deemed to be abandoned under sect. 8 apply to applications deemed void under this section. In short, an application refused, abandoned, or void, does not become public and therefore will not affect a subsequent application for a similar invention, except in so far as sub-sect. (5) and (6) of sect. 7 apply.

Sects. 10. On the acceptance of the complete specification the comptroller shall advertise the acceptance (a); and the application and specification or specifications with the drawings (if any) shall be open to public inspection (β).
10, 11.
Advertisement on acceptance of complete specification.

Where a complete specification is lodged in the first instance and accepted, it will be open to inspection as soon as it is advertised (Patents Rules, 26).

Office, when open. The Patent Office is open every week day from 10 to 4, except on Christmas Day, Good Friday, Her Majesty's Birthday, and Bank Holidays (see Patents Rules, 7).

Opposition to grant of patent. 11. (1.) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice (γ) at the patent office of opposition to the grant of the patent, on the ground of the applicant having obtained the invention from him, or from a person of whom he is the representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application, but on no other ground.

(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing (δ) the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer (ε).

(3.) The law officer shall, if required (ζ), hear the

(a) In Official Journal. Patents Rules, 25, 26.

(β) Inspection fee is 1s. See First Schedule to Patents Rules.

(γ) For Form of Notice, see Patents Forms, D. The fee on notice is 10s. (See first schedule to Patents Rules.)

(δ) Patents Rules, 35—41. Fee on hearing, 1l., by both applicant and opponent respectively.

(ε) See Rules as to Appeals to law officer.

(ζ) For Form of Request, see Patents Forms, T.

applicant and any person so giving notice and being in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made. Sect. 11.

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

The Patent Law Amendment Act of 1852 permitted "persons having an interest in opposing the grant of letters patent" to oppose the grant after the advertisement of the application; but it did not, like this section, enumerate the grounds of objection that might be taken. Grounds of opposition.

1. That the applicant obtained the invention from the opponent or the person of whom he is the legal representative. 1. Invention obtained from opponent or the person of whom he is the legal representative.
- A disclosure to assistants or partners of an invention whilst it is being perfected under an obligation to keep it secret until the patent is taken out is not a disclosure to the public, *Morgan v. Seaward*, 2 M. & W. 544, approved by Lord Blackburn in *Patterson v. Metropolitan Gas Light and Coke Co.*, L. R. 3 App. Cas. 239, and where a partner or assistant, or any other person in a similar position applies for a patent for the invention the real patentee has under this section the means of preventing the grant being made.

The legal representative of a patentee is under sect. 34 entitled to apply for a patent. Such application is required to be made within six months of the decease of the inventor, and it might be maintained that the right of the personal representative to take this objection ought only to be allowed within such six months, since the real ground of the objection is that the personal representative is the one rightly entitled to the patent. On the other hand, the fact that such an application would be practically a fraudulent one, and the declaration that the applicant was the first inventor would be untrue, may lead the Court to hold that the personal representative

Sect. 11.

2. Inven-
tion
already
patented
on prior
applica-
tion.

may take the objection even where he himself is not entitled to a patent.

2. That the invention has been patented in this country on an application of prior date.

That letters patent had already been sealed for the same invention has always been a valid objection to an application, even where they had been granted on a *subsequent* application (*Ex parte Bates and Redgate*, L. R. 4 Ch. 577), though Cairns, L. C., stated in *In re Deering's Patent*, L. R. 13 Ch. D. 393, that he could never understand the principle on which it was decided, and declined to follow it where both applications had been made on the *same* day. For the future the objection that letters patent already exist, is by this section restricted to letters patent granted on an application of *prior* date. This provision, in so far as it limits the objection, is supplemental to sect. 7, sub-sects. (5) and (6), the object evidently being to secure the patent to the first applicant. Great difficulty has hitherto often arisen in deciding on the identity of the patent applied for with an existing patent. Wherever there has been any doubt the presumption is in favour of the application, since the owner of a previously existing patent has always a remedy in the action for infringement (*In re Fox*, 1 Web. 431; *In re Tolson's Patent*, 6 De G. M. & G. 422). The fact that the validity of the existing patent is questioned is immaterial (*In re Manceaux's Patent*, L. R. 6 Ch. 272).

3. Com-
prises
same
invention
as prior
applica-
tion.

3. That the examiner has reported to the comptroller that the specification comprises the same invention as is comprised in a specification bearing the same or a similar title, and accompanying a previous application.

This provision still further secures the first applicant. The previous part of the section prevents a subsequent applicant who may have obtained a patent objecting to a grant to a prior applicant; this proviso enables a prior applicant, if he so chooses, to prevent a grant to a subsequent applicant. Where both applications are made on the same day, the principle of *In re Deering's Patent* will probably be followed, and a patent granted to both. In this case neither patentee can maintain an action for in-

fringement against the other (*In re Deering's Patent*, Sect. 11. L. R. 13 Ch. D. 393).

It will be observed that opposition to the acceptance of the complete specification is restricted to these three grounds. An application can no longer be objected to on the ground of want of utility or prior public user. The Crown might refuse to grant a patent on either of these grounds, inasmuch as the alleged invention would not be "any manner of new manufacture" within the meaning of sect. 46; but the Act contains no provision for taking either of these objections before the comptroller or law officer.

1. Any person may take the second ground of opposition, viz., that the invention has already been patented on an application of prior date. Persons who may oppose.
2. Any person may also (as far as this section goes) take the third ground, viz., that the examiner has reported that the specification comprises an invention already applied for; but inasmuch as notice of such report is (sect. 7, sub-sect. (5)) only given to the applicants, this ground of opposition is practically restricted to the prior applicant.
3. The real or true inventor (or his personal representative) may take the first ground, viz., that the invention was obtained from him.

The person opposing sends to the Patent Office within two months of the date of the advertisement of the acceptance of the complete specification, a notice of opposition in Form T (see Patents Forms), stamped with a 10s. stamp, stating on which of the grounds mentioned in sect. 11 he intends to oppose. Practice on opposition. Notice. If a ground of opposition be that the invention has been patented in this country on an application of prior date, the title, number, and date of such prior patent must be specified, otherwise opposition on that ground will not be allowed. The notice is also to contain an address for service in the United Kingdom, and be accompanied by an unstamped copy, which the comptroller will send to the applicant.

Within fourteen days after the expiration of two months from the advertisement of the acceptance of the complete specification, the opponent is to leave at the Patent Office affidavits in support of his opposition, and send a list of the same to the applicant. Evidence The applicant may obtain copies of such affidavits from the Patent Office or the

Sects. 11, 12. opponent, and within fourteen days from the receipt of the list of affidavits, he is to leave at the Patent Office his affidavits in answer, and deliver to the opponent a list thereof. The opponent may obtain copies of such affidavits from the applicant, or the Patent Office, and within seven days he is to leave his affidavits in reply, and deliver to the applicant a list thereof. No further evidence can be left except by leave of the comptroller, (1) upon written consent of both parties ; (2) specially obtained on notice to the opposite party. The comptroller may enlarge the time for lodging affidavits.

As to affidavits taken abroad, see Patents Rules, 20.

Hearing. The comptroller appoints the time for hearing, giving seven days' notice. A hearing fee of 1*l.* is payable by both parties respectively. The decision of the comptroller will be duly notified to both parties. See Patents Rules, 32—41.

Appeal to law officer. The practice on appeals to law officer is the same as on appeals under sect. 7. See note, "Appeals to Law Officer," under that section.

Sealing of patent. **12.** (1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the patent office (a).

(2.) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases hereinafter mentioned, that is to say—

(a.) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

(b.) If the person making the application dies

(a) S. 84.

before the expiration of the fifteen months **Sect. 12.**
aforesaid, the patent may be granted to
his legal representative and sealed at any
time within twelve months after the death
of the applicant.

The practice as regards sealing has hitherto been **Sealing the**
this :—after objections were disposed of by the law **patent.**
officer, he caused a warrant to be sealed with the seal of
the Commissioners of Patents, for affixing the great seal
to the grant. This section substitutes the seal of the
Patent Office (sect. 84) for the great seal, and the comp-
troller, after objections are disposed of, may at once seal
the patent.

The time allowed for sealing is fifteen months from **Limit of**
the date of application, except in these cases :— **time for**

1. Where the sealing is delayed by an appeal to the **sealing,**
law officer. Four appeals to the law officer are **fifteen**
mentioned in the previous sections— **months,**
except
 - (a.) Against the amendment of the application **1. Where**
(sect. 7, sub-sect. (2)). **appeal to**
 - (b.) As to the identity of the application with a **law officer.**
 - (c.) Against the refusal to accept the complete
specification after report of the examiner
(sect. 9, sub-sect. (2)).

(d.) Against decision on opposition under sect. 11.

The last two mentioned appeals seem to be the only
ones that will entitle an applicant to further time for
sealing under this section. The fact that a complete
specification must be lodged within nine months and
accepted within twelve months (sect. 9) from the date of
application, implies that the first and second appeals
must be determined within twelve months from the date
of application, since no question as to the sufficiency of
the complete specification can arise until the provisional
specification has been duly accepted.

2. Where sealing is delayed by “opposition to the **2. Where**
grant of the patent.” **delay**

This refers to opposition before the comptroller under **owing to**
sect. 11. Where there is an appeal from his decision, **opposition.**
the previous exception will also apply.

3. Where the applicant dies before the expiration of **3. Death**
fifteen months. **of appli-**

In this case the patent may be granted to his personal **cant.**

Sects. 12, 13. representatives within twelve months after the death of the applicant. It is quite possible that an applicant might die within three months from the date of his application, and then the question will arise whether his personal representative has only twelve months from the day of such death allowed by this section, or the fifteen months from the date of application to which the deceased applicant would have been entitled had he lived, within which to obtain the sealing of the patent.

Date of
patent.

13. Every patent shall be dated and sealed as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification (a): Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application (β).

Date of
patent.

This section introduces two important changes—

1. The date of the patent is now in all cases to be the date of application. This date will be either the day on which the application is lodged where it is left personally, or, where it is sent by post the day on which the same would be delivered in the ordinary course of post (sect. 97). The particular hour of the day at which the application is so received is not taken into account, though they will be numbered as received (Patents Rules, 22); and all applications made on the same day for the same invention will be entitled to be sealed (*In re Deering's Patent*, 13 Ch. D. 393).

Under the Patent Law Amendment Act, 1852, power was given to the law officer and the Lord Chancellor to direct that the patent should be sealed as of any date between the day of application and the day of sealing.

Sealing not
to affect
rights of
prior
applicant.

2. The sealing of a patent on a subsequent application is not to prevent the sealing of a patent for a similar invention on a prior application.

Sect. 11 deprives the patentee, on a subsequent

(a) See s. 10.

(β) See s. 7, sub-s. (5), (6).

application, of the right of objecting to a grant to the prior applicant, and this section prevents the objection being taken by the comptroller or law officer. See note to sect. 7, sub-sects. (5) and (6.)

Sects.
13, 14.

Provisional Protection.

14. Where an application for a patent in respect of an invention has been accepted (a), the invention may during the period between the date of the application and the date of sealing such patent (β) be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Provisional
protection.

The object of provisional protection is to enable the applicant to use or publish the invention at once. Without such statutory protection, the use or publication of the invention before letters patent are actually sealed would amount to such a prior publication as would deprive the patent of novelty. It does not give the applicant any rights against the public, as no action for infringement can be maintained for any acts committed previous to the actual grant. Under the Patent Law Amendment Act, 1852, it did not give the applicant a right to have his patent sealed as against a subsequent applicant who obtained a grant before him (*In re Bates and Redgate's Application*, L. R. 4 Ch. 577); though this was questioned in *In re Deering's Patent*, 13 Ch. 393. This is now altered by sects. 7, 11, and 13, but the right of a prior applicant to object to or prevent a grant to a subsequent applicant is not in those sections called provisional protection.

Effect of
provisional
protection.

As to applications made on the same day, see *In re Deering's Patent*, L. R. 13 Ch. D. 393, and note to sect. 11.

Under the Patent Law Amendment Act, 1852, provisional protection was obtained on the law officer certifying that the provisional specification sufficiently described the nature of the invention.

How
obtained.

(α) S. 7, sub-s. (4).

(β) S. 12

**Sects.
14, 15.**

Under the present Act it is obtained on the acceptance by the comptroller of the application, *i.e.*, of the provisional specification, or of the complete specification in case it is left in the first instance.

**How long
it con-
tinues.**

Provisional protection will last until the day of sealing, and not merely for the six months allowed by the Patent Law Amendment Act, 1852. As to the date of sealing, see note to sect. 12.

Protection by Complete Specification.

**Effect of
acceptance
of com-
plete speci-
fication.**

15. After the acceptance of a complete specification (a) and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him (β).

**Effect of
protection
by com-
plete speci-
fication.**

The applicant has "the like privileges and rights" as if a patent had been actually sealed. See the remarks of Hatherley, L.C., in *Ex parte Bates and Redgate*, L. R. 4 Ch. 577. In *Ex parte Henry*, 8 Ch. 167, it was held that the corresponding section of the Patent Law Amendment Act, 1852, did not give the applicant who had obtained protection by complete specification the right (which would have resulted had the patent been sealed) to object to the sealing of a patent for a similar invention to a prior applicant. Under sect. 13, even the sealing of the patent does not give such a right, so that the distinction laid down in that case no longer exists.

The only disadvantage the applicant who has obtained protection under this section is under, as compared with one who has actually obtained a patent, is that contained in the proviso that he cannot maintain an action for infringement. But once the patent is granted, he can maintain an action for acts of infringement previous to the sealing, provided they were committed after the

(α) See s. 10.

(β) And then only for acts after publication of complete specification. S. 13.

publication of the complete specification (sect. 13). **Sects.**
Under sect. 24 of the Patent Law Amendment Act, **15—17.**
proceedings could only be taken for acts of infringement
committed after the sealing.

Patent.

16. Every patent when sealed shall have effect **Extent of**
throughout the United Kingdom and the Isle of **patent.**
Man.

A patent no longer applies to the Channel Islands.

17. (1.) The term limited in every patent for **Term of**
the duration thereof shall be fourteen years from its **patent ;**
date (a). **certificate**
of renewal.

(2.) But every patent shall, notwithstanding any-
thing therein or in this Act, cease if the patentee fails
to make the prescribed payments (β) within the pre-
scribed (β) times.

(3.) If, nevertheless, in any case, by accident, mis-
take, or inadvertence, a patentee fails to make any
prescribed payment within the prescribed time, he
may apply to the comptroller for an enlargement of
the time for making that payment (γ).

(4.) Thereupon the comptroller shall, if satisfied
that the failure has arisen from any of the above-
mentioned causes, on receipt of the prescribed
fee (δ) for enlargement, not exceeding ten pounds,
enlarge the time accordingly, subject to the following
conditions :—

(a.) The time for making any payment shall not,
in any case, be so enlarged for more than
three months.

(a) The day of application.
S. 13.

(β) See second schedule to Act,
or first schedule to Patents
Rules.

(γ) For Form, see Patents

Forms, K.

(δ) Enlargement not exceeding
one month, 3*l.*, two months, 7*l.*,
three months, 10*l.* See first
schedule to Patents Rules.

Sect. 17. (b.) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time and before the enlargement thereof, the Court before which the proceeding is proposed to be taken, may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

Term of
patent.

The time for which the patent is granted is fourteen years, subject to the condition that it shall cease if the patentee fails to make any prescribed payment within the prescribed times. The second schedule to the Act, and first schedule to Patents Rules, contain a list of fees payable and the times of payment. The total amount of fees payable, exclusive of the 4*l.* paid on application and complete specification, is 150*l.* The patentee may pay this amount in two sums of 50*l.* and 100*l.*, payable before the end of the fourth and eighth years (fourth and seventh years in case of patents granted before the commencement of the Act) after date of patent respectively, or he may pay it by yearly instalments, the first to be paid before the end of the fourth year from date of patent. If the latter plan be adopted, the first four instalments are to be 10*l.* each, the fifth and sixth 15*l.* each, and the seventh, eighth, ninth, and tenth, 20*l.* each.

Notice of
renewal.

Seven days at least before the expiration of any period, the patentee must, if he intends to continue the patent, give notice to the comptroller in Form J (Patents Forms), transmitting the fee and enclosing a certificate of payment, stamped with fee payable, in the form contained in Form J (Patents Rules, 42—44).

Extension
of time for
payment.

The enlargement of the time in certain cases for paying the fees is new. Hitherto a patentee who inadvertently had omitted to make a prescribed payment lost the benefit of his invention, unless he obtained an Act of Parliament to make it valid.

The section permits enlargement of time where the non-payment was due to "accident, mistake, or inadvertence." It yet remains to be seen what circumstances will be held to warrant an extension of time under one or other of these heads, as it does not follow that the kind of "accident" or "mistake" which would void a

contract would require to be shown in order to obtain further time for payment. **Sects. 17, 18.**

The enlargement of time, where granted, is subject to the conditions— **Conditions.**

1. That a fee be paid (see above).
2. That it be for not more than three months.
3. That where acts of infringement are committed between the expiration of the prescribed time for payment and the enlargement thereof, the Court, in an action for infringement, may refuse to give damages for such acts.

The application for extension is to be in Form K (Patents Forms), and the circumstances under which the patentee failed by accident, mistake, or inadvertence to make the payment, must be stated in detail. The comptroller may require the facts alleged to be substantiated (Patents Rules, 46). **Application for extension.**

Amendment of Specification.

18. (1.) An applicant or a patentee may, from time to time, by request (a) in writing left at the patent office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same (β). **Amendment of specification.**

(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner (β), and at any time within one month from its first advertisement any person may give notice at the patent office of opposition to the amendment (γ).

(3.) Where such notice is given, the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case (δ), subject to an appeal to the law officer.

(α) Patents Forms, Form F. Fee, if before sealing, 1*l.* 10*s.* ; after sealing, 3*l.* Form, see Patents Forms, G. Fee, 10*s.*

(β) Patents Rules, 48.

(γ) Patents Rules, 49. For

(δ) Patents Rules, 50—53. Fee on hearing, 1*l.*, by both parties.

Sect. 18. (4.) The law officer shall, if required, hear the person making the request (α), and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed (β).

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer (β).

(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all Courts and for all purposes be deemed to form part of the specification.

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending (γ).

(α) Patents Forms, Form T.
(β) See rules as to appeals.

(γ) See as to this, next section.

It was not until the year 1835 that a patentee obtained the right to amend his specification by disclaimer. Some doubt existed as to the right of an assignee to disclaim, but by the 7 & 8 Vict. c. 69, s. 5, power was given to a patentee who had assigned his patent to disclaim, the benefit of such disclaimer being acquired by the assignee. The present section gives an assignee power to amend the specification directly, inasmuch as a patentee is defined by sect. 43 as "the person for the time being entitled to the benefit of the patent." Sect. 18.

The right of amendment given by this section is worded somewhat differently to the corresponding power given by the Act of 1835. This last-mentioned Act permitted a patentee to enter "a disclaimer of any part of either the title of the invention or of the specification," or to "enter a memorandum of any alteration in the said title or specification not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent."

This section is restricted to amendment of the "specification." It does not, therefore, extend to any amendment of the actual letters patent. Hitherto letters patent could, at common law, be corrected by the Lord Chancellor, to whom the writ of privy seal for making the patent was directed. Under the present Act patents are sealed by the comptroller (sect. 12), but no power seems to be given to the comptroller to amend errors in letters patent themselves, except in so far as sect. 91 gives him power to correct clerical errors "in or in connexion with an application for a patent," but such section does not appear to extend to the letters patent. No power to amend letters patent themselves.

The section applies to an "applicant," and therefore a specification may be amended before letters patent are sealed. The provisions of the section are applicable to a complete specification rather than to a provisional specification, inasmuch as the latter is not published until the acceptance of the former, and the advertisement of a proposed amendment of the provisional specification would therefore, at first sight, appear to be useless. But where the proposed amendment would practically turn the application into an application for a new patent in which another applicant or patentee is interested, the advertisement may give such other applicant or patentee sufficient information to enable him to oppose the amendment, though by sub-sect. 8, the power of amendment possessed by the comptroller is limited so as not to Specification may be amended before sealing.

Sect. 18. enable an amendment to be allowed which would make the patent larger than it was before.

Disclaimer. The object of a disclaimer is to enable a patentee to omit those parts of a specification which, if retained, would make the patent void (see *Ralston v. Smith*, 11 H. L. C. 243).

It may be allowed after a judgment adverse to the validity of the patent (*Morgan v. Seaward*, 2 Carp. P. C. 104).

Matters which form no part of the invention need not be disclaimed (*Lister v. Leather*, 8 E. & B. 1004).

The disclaimer merely operates to strike out the parts of the specification disclaimed and does not serve to explain what is left (*Tetley v. Easton*, 2 C. B. N. S. 706). The disclaimer will be deemed part of the specification (sub-sect. 9, see *Stocker v. Waller*, 9 Jur. 136).

The disclaimer is not retrospective so as to make a person liable for an infringement prior to the disclaimer, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge (sect. 20).

Leave to amend conclusive. Sub-sect. (9) deals with the point raised in *Foxwell v. Bostock*, 4 De G. J. & S. 298, viz., as to the effect of a disclaimer which exceeded the provisions of the Statute. This sub-sect. makes the leave to amend conclusive as to the right to amend (except in cases of fraud).

As to amendment during the pendency of legal proceedings, see the following section.

Practice as to amendment. A request for leave to amend is made in Form F. (Patent Forms). The reasons for making the amendment are to be stated, and the nature of the proposed amendment is to be shown in red ink on a copy of the original specification and drawings which are to accompany the application (Patents Rules, 48). The application requires a 30s. stamp if the patent has not been sealed, if sealed a 3l. stamp (see Schedule to Patents Rules).

The application will be advertised in the Official Journal.

Notice of opposition to the amendment may be given in Form G. (Patents Forms). The grounds of opposition are to be stated, an address for service in the United Kingdom is to be given, and the opponent himself must sign the notice. The notice requires a 10s. stamp and is to be accompanied by an unstamped copy.

Within fourteen days after the expiration of one

month from the first advertisement of the application, the opponent is to leave at the Patent Office affidavits in support of his opposition and deliver a list to the applicant. Copies of such affidavits may be obtained by the applicant from the opponent or the Patent Office, and, within fourteen days from the delivery of the above list, the applicant is to leave at the Patent Office his affidavits in answer, and deliver a list thereof to the opponent, who is allowed a period of seven days to leave his affidavits in reply, and deliver a list thereof to the applicant. **Sects. 18, 19.**

No further evidence is allowed, except by leave of the comptroller, obtained (a) on written consent of both parties, (b) specially, after notice to the other side.

The comptroller gives both parties seven days' notice of the hearing. A hearing fee of 1*l*. has to be paid by both parties.

When leave to amend is given comptroller may require new specification and drawings to be left (Patents Rules, 54). The amendment is also advertised (Patents Rules, 56).

As to amendment generally, see Patents Rules, 48—56.

The appeal from the decision of the comptroller to the law officer is governed by the same rules as other appeals. For practice, see note to s. 7. Appeals to law officer.

19. (1) In an action for infringement of a patent (a), and in a proceeding for revocation of a patent (β), the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the Patent Office (γ) for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed. Power to disclaim part of invention during action, &c.

This section introduces an important alteration in the law. The 5 & 6 Will. IV. c. 83, s. 1, limited the effect of an amendment entered during action by enacting that no disclaimer or memorandum of alteration enrolled after the commencement of a suit, except proceedings by *scire facias*, could be given in evidence in such suit.

(a) Ss. 28—31.

(β) S. 26.

(γ) Copy order is left with ap-

plication. Patents Rules, 55.
Fee on application is 3*l*. (See first schedule to Patents Rules).

**Sects.
19, 20.**

A patentee under the present Act cannot apply to the comptroller for leave to amend, unless by leave of the Court or judge, if any action for infringement of the patent or any proceeding for revocation of a patent be pending. The leave to amend may be subject to such terms as may be imposed.

As to giving such amendment in evidence, and its effect on the pending action, see the following section.

Applica-
tion, how
made.

When the Court makes an order under this section an official or verified copy of such order is to be left at the Patent Office, along with the application for leave to amend (Patent Rules, 55): otherwise the application is made and the same procedure is adopted as in the ordinary application for amendment. See note to preceding section.

The fee on application is 3%.

Restriction
on recovery
of damages.

20. Where an amendment by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Under this Act an amendment may be allowed in two cases: (1) by the comptroller, under sect. 18; (2) by the Court or judge, under sect. 19.

This section does not say that the amendment may not be given in evidence where the alleged infringement occurred previous to the amendment, but only that in such a case damages are not to be given, except as provided by the last proviso. A patentee may be able to establish the validity of the patent as amended—a matter of some importance in view of the provisions of sect. 31.

Amend-
ment
during
legal pro-
ceedings
not always
advanta-
geous.

Unless the patentee can satisfy the Court that his original claim was framed in good faith and with reasonable care and knowledge, it may be better not to amend until the action is at an end—inasmuch as the result of the action will show the patentee where his specification is wanting. It is quite possible for the Court to give

leave to amend, for the amendment to take place, and yet for the patent to be upset in the action.

Sects.
20—22.

21. Every amendment of a specification shall be advertised in the prescribed manner,

Advertise-
ment of
amend-
ment.

The advertisement will be in the Official Journal of the Patent Office and in any other manner if the comptroller so directs (Patents Rules, 56).

Compulsory Licences.

22. If on the petition (a) of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licences on reasonable terms—

Power for
Board to
order grant
of licences.

(a.) The patent is not being worked in the United Kingdom ; or

(b.) The reasonable requirements of the public with respect to the invention cannot be supplied ; or

(c.) Any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Board may order the patentee to grant licences on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just (β), and any such order may be enforced by mandamus.

This section is new. The President of the Board of Trade, in moving the second reading of the Bill, explained the object of and the reasons for adopting the clause as follows:—"The next point was the question of licensing. Their position was, that while the inventor was entitled to a reward, he was not entitled to anything in the nature of unreasonable amount, and it had been pointed out, especially in an interesting memorial presented on behalf

(α) For form of petition and application, see Patents Forms,

H1, and H. Fee is 5*l*.

(β) See Patents Rules, 57—63.

Sect. 22. of the chemical industry, that under the present law it would have been possible, for instance, for the German inventor of the hot-blast furnace, if he had chosen to refuse a licence to one in England, to have destroyed almost the whole iron industry in this country and to have carried the business bodily over to Germany. Although that did not happen in the case of the hot-blast industry, it happened in a certain manufacture connected with the coal products, and the whole of that had gone to Germany, because they would not grant a licence in this country."

Applies
only to
patents
granted
after 31st
December,
1883.
Practice.

This section applies only to letters patent granted on applications made after the 31st Dec., 1883, and does not affect (1) patents granted before that date, or (2) patents granted after that date on applications made previous to such date.

An application is made in Form H (Patents Forms) bearing a 5*l.* stamp.

A petition is framed in Form H1 (Patents Forms) stating the title of the invention, the petitioner's interest therein, the grounds upon which relief is claimed with reference to those mentioned in the section, the circumstances that show that the grounds relied on are due to the default of the patentee to grant licences on reasonable terms, and the purport of the order asked for.

The application, with an unstamped duplicate copy, the petition, with an examined copy, accompanied by affidavits or other evidence, are left at the Patent Office.

If the Board of Trade are of opinion that a *prima facie* case is made out they will give the petitioner directions as to further proceedings. On or before a day to be named by them the petitioner is to deliver to the patentee copies of the petition and affidavits or other evidence left in support. Within fourteen days from day of delivery of such delivery the patentee is to give notice in Form I (Patents Forms), stamped with a 5*l.* stamp, if he intends to oppose, and to leave at the Patent Office his affidavits in opposition and deliver copies to petitioner. Within fourteen days from such delivery the petitioner is to leave at the Patent Office his affidavits in reply and deliver copies to the patentee.

Further proceedings will be fixed by the Board of Trade (see Patents Rules, 57—63).

Mandamus. As to enforcing an order by mandamus under this section, see Rules Supreme Court, 1883, Order LIII.

*Register of Patents.*Sect. 23.

23. (1.) There shall be kept at the patent office a book called the Register of Patents (a), wherein shall be entered the names and addresses of grantees of patents (β), notifications of assignments and of transmissions of patents (γ), of licences under patents (δ), and of amendments (ε), extensions (ζ), and revocations (ι) of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed (λ).

(2.) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(3.) Copies of deeds, licences, and any other documents affecting the proprietorship in any letters patent or in any licence thereunder, must be supplied to the comptroller in the prescribed manner (λ) for filing in the Patent Office.

Two registers have hitherto been kept: (1) the Register of Patents, containing all matters affecting the validity and title of patents, and (2) the Register of Proprietors, containing matters relating to the title to letters patent.

For the future one register only will be kept, containing all matters referred to in sub-sect. (1).

No trust, express, implied, or constructive, is to be entered on the register (sect. 86).

The register is to be deemed a continuation of the registers kept under previous Acts (sect. 114).

The name, address, and description of the patentee, together with the title of the invention is entered on the register by the comptroller upon the sealing of the patent (Patents Rules, 64).

When a person becomes entitled to a patent or any share or interest therein by assignment, either for the

(a) See Patents Rules, 64—75, as to register.

(β) See Patents Rules, 64.

(γ) Patents Rules, 65—69. See also a. 87.

(δ) Patents Rules, 74.

(ε) S. 18.

(ζ) S. 25. Patents Rules, 71.

(ι) S. 26. Patents Rules, 71.

(λ) Patents Rules, 68, 74.

Register of patents.

Trusts not entered.

Continuation of former registers.

Name, address, title.

Assignments and transmissions.

Sect. 23. United Kingdom and the Isle of Man, or for any place therein (sect. 36), or by transmission or other operation of law, *e.g.*, by will, intestacy, bankruptcy, mortgage, &c., a request for the entry of his name in the register as such complete or partial proprietor of the patent is to be addressed to the comptroller at the Patent Office in Form L (Patent Forms), bearing a 10s. stamp (see first schedule to Patent Rules). The request is to state the name, address, and description of the person claiming to be entitled to the patent or to any share or interest therein, and the particulars of the assignment, transmission, or other operation of law in question so as to show the manner in which the patent or share therein have become vested in him (see below). The request may be signed by the person or his agent duly authorised. The assignment or other document containing or being evidence of the transmission is to be forwarded to the comptroller along with an examined copy. Where the document is a matter of record, an official or certified copy is to be left along with the request (Patents Rules, 65—69).

By will.
On intestacy.
On bankruptcy.

The evidence of the assignment or transmission above referred to will be, in assignments and mortgages, the assignment or mortgage. Where title is claimed through a will, the probate, and in intestacies, the letters of administration must be sent. In Bankruptcy the evidence of the title of the trustee is the certificate which operates as an assignment of the debtor's property (Bankruptcy Act, 1883, s. 54).

Licences.

In the case of licences application for registration is to be made in Form M (Patents Forms), stamped with a 10s. stamp. The original licence and an examined copy must accompany the application (Patent Rules, 74).

Amendments.

Amendments will be entered by the comptroller. The fee is paid on application (see sect. 18).

Revocations.

The person in whose favour the order is made is to leave at the Patent Office an office copy of the order of revocation, when the purport of such order will be registered (Patents Rules, 71).

Application for entry of order of Privy Council is to be made in Form S (Patents Forms), stamped with a 10s. stamp, accompanied by an office copy of the order (Patents Rules, 71).

Agreements.

All agreements by which a person acquires any interest in a patent ought to be registered: application being made as in the case of an assignment (Patents Rules, 65).

By sect. 87 the person whose name is entered in the register has, subject to any rights appearing from the register to be vested in other persons, power absolutely to assign or grant licences as to, or otherwise deal with the same and to give effectual receipts for any consideration for such assignment, licence, or dealing, but power is given to enforce any equities in respect of such patent.

**Sects.
23—25.**

Effect of
registra-
tion.

24. (1.) There shall be paid in respect of the several instruments described in the second schedule to this Act, the fees in the schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

Fees in
schedule.

(2.) The Board of Trade may from time to time, if they think fit, with the consent of the Treasury reduce any of those fees.

The complete list of fees payable will be found in the first schedule to the Patents Rules.

The fee for provisional protection has been reduced from 5*l.* to 1*l.*, and the first payment from 20*l.* to 3*l.* No reduction has been made in the total amount of subsequent payments, viz. 150*l.*, but liberty is given to pay such sum by fixed instalments (see second schedule to Act and first schedule to Patents Rules).

As to enlargement of time for paying fees, see sect. 17.

As to fees payable on applications pending on 1st January, 1884, see sect. 45.

Extension of Term of Patent.

25. (1.) A patentee may, after advertising in manner directed by any rules made under this section (a) his intention to do so, present a petition to Her Majesty in Council, praying that his patent

Extension
of term of
patent on
petition to
Queen in
Council.

(a) No rules have as yet been made.

Sect. 25. may be extended for a further term ; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat (α), addressed to the Registrar of the Council at the Council Office, against the extension.

(3.) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same (β), and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen years ; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6.) It shall be lawful for Her Majesty in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee (γ).

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the

(α) For form, see App. A.

s. 28, sub-s. (2).

(β) Assessor may be called in,

(γ) See App. D.

Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a Division of the High Court of Justice (a). Sect. 25.

Previous to the 5 & 6 Will. IV. c. 83, a patent could only be extended by Act of Parliament. That Act gave the Queen in Council power to extend a patent for a term not exceeding seven years. The 7 & 8 Vict. c. 69, authorised an extension in certain special cases for a term of fourteen years. The first-mentioned Act did not contain any statement of the principles which were to guide the Judicial Committee in recommending an extension. The only words used in reference to the matter were that the Committee should "proceed to consider the same (*i.e.*, the petition) after the manner and in the usual course of its proceedings;" but the 5 & 6 Vict. c. 69, referred to the desirability of extending the time "in cases in which it can be satisfactorily shown that the expense of the invention hath been greater than the time now limited by law will suffice," and the applicant for fourteen years had to show that such additional period was necessary in order to reimburse and remunerate him. This is not retained in the present section.

In moving the second reading of the bill, Mr. Chamberlain referred to this section as follows :—

"Changes, however, were introduced by the Bill in the extension of patents. At present, the Privy Council decided every application for an extension, and considered first whether the inventor had made a sufficient profit from his business. Another rule was, that where it was shown that the inventor had made a sum of 10,000*l.*, no application for an extension of the patent should be granted. That also seemed irrational, for while a sum of 10,000*l.* would be an enormous profit in some cases, it would be an insufficient reward for such an invention as that of Bessemer, who had revolutionised the whole iron industry. Under these circumstances, he proposed to put in a provision which should be a direction to the Judicial Committee to the effect that they should have regard to the nature of the invention in relation to the public, to the profits made by the patentee as such, and not by the manufacturer, and to all the circumstances of the case."

The proviso in sub-sect. 5, that the Judicial Committee

Sect. 25. are to have regard to the profits of the patentee "as such," refers to the question raised in *In re Saxby's Patent*, 7 Moo. P. C. C., N. S. 82, and other cases as to including profits made by the patentee as manufacturer in determining whether or not he had been sufficiently remunerated, the tendency of recent cases being to include such profits. Apart from this clause, any change introduced by sub-sect. 5 will be due to the interpretation placed on it rather than to its actual wording.

Grounds of extension.

1. Nature and merits of invention.

1. The nature and merits of the invention in relation to the public.

In considering the merits of the invention, the Judicial Committee require a greater degree of utility to be shown than is necessary in order to obtain a patent (*In re Errard's Patent*, 1 Web. 559; *In re Downton's Patent*, *ib.* 565; *In re Saxby's Patent*, 7 Moo. P. C. C., N. S. 82). The reason is, that if patents were not granted on slight proof of utility, the public would run the risk of losing inventions, but no such risk is incurred in refusing an extension of a patent, and where the invention is really beneficial to the public, the applicant for extension can easily prove the fact. The application will always be refused where the utility is small (*In re Simister's Patent*, 1 Web. 721), or where the extension would be detrimental to the public (*In re McDougal's Patent*, L. R. 2 P. C. 1).

The success of the invention will be inquired into, and the fact that it has not come into public use will raise a strong presumption against its utility (*In re Woodcroft's Patent*, 2 Web. 29; *In re Bakewell's Patent*, 15 Moo. P. C. C. 385; *In re Allan's Patent*, L. R. 1 P. C. 507; *In re Herbert's Patent*, L. R. 1 P. C. 399). This presumption of want of utility may be rebutted by showing that the nature of the invention was such that it would not likely come into immediate use (*In re Jones' Patent*, 1 Web. 577); or that the non-user was due to the pecuniary difficulties of the patentee (*In re Wright's Patent*, 1 Web. 575); or that the market for the patent was a limited one (*In re Herbert's Patent*, L. R. 1 P. C. C. 399).

That the invention has not been carried into practice so as to benefit the public will also be a good ground for refusing the extension (*In re Pinkus' Patent*, 12 Jur. 233; *In re Herbert's Patent*, L. R. 1 P. C. 399), even though that be due to disputes relating to the working of the patent (*In re Patterson's Patent*, 6 Moo. P. C. C. 469); but it is open to the applicant to explain the cause of the delay, and if he gives a reasonable excuse the extension may be granted (*In re Norton's Patent*, 1 Moo. P. C. C.,

N. S. 339); and strong and unanswered evidence of utility may be sufficient, though the patent has not been tested by actual employment (*In re Hughes' Patent*, L. R. 4 App. Cas. 174). As to improvements in a non-used patent, see *Otto v. Linford*, 46 L. T. 35. Sect. 25.

2. The profits made by the patentee as such.

In estimating his profits, the applicant must *include* all profits made by him as patentee, such as result from licences or royalties, including too, profits made in another country (*In re Johnson's Patent*, L. R. 4 P. C. 75); or made by sale for exportation (*In re Hardy's Patent*, 6 Moo. P. C. C. 441). See also *Adair's Patent*, L. R. 6 App. Cas. 176.

2. Profits
of patentee
as such.

Profits made by the patentee not "as such"—*e.g.*, by manufacturing the patent article—would under subsect. 15 not be included. See *In re Betts' Patent*, 1 Moo. P. C. C., N. S. 49; *In re Muntz's Patent*, 2 Web. 121, and *In re Saxby's Patent*, 7 Moo. P. C. C., N. S. 82, for the principles on which the Committee have hitherto acted.

The Committee will not go behind the accounts or send them back in order to ascertain what part of the profits the applicant is entitled to as manufacturer and what part as patentee (*ibid.*). *Adair's Patent*, L. R. 6 App. Cas. 176.

He is allowed to make certain deductions, *e.g.*, expenses incurred in bringing out the patent (*In re Roberts' Patent*, 1 Web. 575); or in making experiments (*In re Kay's Patent*, 1 Web. 572); or in defending the patent (*ibid.*); or in bringing the invention into use (*In re Galloway's Patent*, 1 Web. P. C. 729). He may also deduct a sum for the exclusive devotion of time in bringing the patent into notice (*In re Carr's Patent*, L. R. 4 P. C. 539), as well as a manufacturer's fair profit (*In re Galloway's Patent*, 1 Web. P. C. 729).

3. Other "circumstances of the case."

The Judicial Committee have also been accustomed to look at :

3. Other
circum-
stances.

(a.) The personal merit of the inventor. The personal merit of the inventor is not exactly the same thing as the merit of the invention as regards the public. It is true that in some cases no distinction is drawn between these two kinds of merit; in others merit is attributed to the inventor because of the merit in the invention, but in *In re Hill's Patent*, 1 Moo. P. C. C., N. S. 258, and *In re Norton's Patent*, *ib.* p. 339, the merit of the invention was distinguished from the benefit or utility conferred on the public. Under the head of "merit in" (a.) Perso-
nal merit
of inven-
tor.

Sect. 25. the inventor” may be placed those cases in which the Judicial Committee have had regard to the skill and ingenuity shown by the patentee in making the invention (see *In re Downton's Patent*, 1 Web. P. C. 565 ; *In re Whitehouse's Patent*, *ib.* 473 ; *In re Hill's Patent*, 1 Moo. P. C. C., N. S. 258).

The fact that the applicant was the importer and not the inventor of the patent takes away from personal merit (*In re Soames' Patent*, 1 Web. P. C. 733).

An assignee represents the whole merit of the inventor (*In re Galloway's Patent*, 1 Web. 724 ; *In re Morgan's Patent*, *ib.* 737) ; but the Judicial Committee will have regard to the personal merit (if any) of the assignee himself, *e.g.*, where he assisted the patentee (*In re Whitehouse's Patent*, 1 Web. 473).

It is no detraction from the merit of the inventor that others had thrown out suggestions in regard to the invention (*In re Belts' Patent*, 1 Moo. P. C. C. 49).

(b.) In-utility.

(b.) The inutility of the invention.

The Judicial Committee do not raise the question of the utility except in so far as a high degree of merit in the invention must be shown (*In re Saxby's Patent*, L. R. 3 P. C. 292) ; and on this ground they refused to extend a patent where from the specification it appeared that the subject matter would not support a valid patent (*In re McDougal's Patent*, L. R. 2 P. C. 1).

(c.) Effect of prolongation on public.

(c.) The effect the prolongation might have on the public. Where the prolongation would be detrimental to the public, the Committee will take that fact into account (*In re McInnes's Patent*, L. R. 2 P. C. 54).

(d.) Granting licences.

(d.) The willingness or unwillingness of the applicant to grant licences on reasonable terms. Where an exclusive licence had been granted prolongation was refused (*In re Cardwell's Patent*, 10 Moo. P. C. C. 488).

Conditions annexed to extension.

The Judicial Committee may order the grant of a new patent, subject to “any restrictions, conditions, and provisions it may think fit.” The following are examples of conditions imposed:—

That an annuity should be secured (by the assignee applicant) to the original inventor (*In re Whitehouse's Patent*, 2 Moo. P. C. C. 496 ; *Russell v. Ledsam*, 1 H. L. Cas. 687 ; *In re Markwick's Patent*, 13 Moo. P. C. C. 310 ; *In re Pitman's Patent*, L. R. 4 P. C. 84) ; or that a portion of the profits should be secured to the original inventor (*In re Hardy's Patent*, 6 Moo. P. C. C. 441) ; or to his widow (*In re Herbert's Patent*, L. R. 1 P. C. 399) ; that the patented article should be sold at a fixed price

(*In re Hardy's Patent*, 6 Moo. P. C. C. 441); that licences **Sect. 25.** should be granted to the public on certain terms (*In re Mallett's Patent*, L. R. 1 P. C. 308); that the Crown should be at liberty to use the new patent without licence (*In re Petitt Smith's Patent*, 7 Moo. P. C. C. 133; *In re Napier's Patent*, L. R. 6 App. Cas. 174). The Privy Council refused to impose this last mentioned condition in *In re Carpenter's Patent*, 2 Moo. P. C. C., N. S. 191 (n.), and in *In re Lancaster's Patent*, 2 Moo. P. C. C., N. S. 189); that those portions of the original patent not worked out be disclaimed (*In re Bodmer's Patent*, 8 Moo. P. C. C. 282); that the applicant should secure to the person to whom belonged the right of granting licences under the original patent a similar right of granting licences under the new patent (*In re Normandy's Patent*, 9 Moo. P. C. C. 452).

By the existing Rules (see Privy Council Rules) the Practice. applicant, after advertising three times in the *London Gazette* and in three London papers, and three times in a country paper near where he carries on business, is, within one week from the insertion of his last advertisement in the *Gazette*, to present a petition for extension. The petition must be presented six months before the time limited for expiration of the patent, and be accompanied by affidavits of the above advertisements having been duly inserted.

Any person may enter a caveat addressed to the Registrar of the Council at the Council Office, and will be entitled to be heard on such petition. A copy of the petition must be served on such person. Within one fortnight after being served with the petition, all persons opposing are to send to the Council Office notice of their objections to the granting of the prayers of such petition. The petitioner must, one week before day fixed for hearing, lodge six printed copies of the specification, and four copies of the balance sheet of expenditure and receipts, relating to the patent in question. Such accounts are proved at the hearing.

The petition is to mention a day on which application will be made to fix a day for hearing—such day being not less than four weeks from date of last advertisement in the *Gazette*. All notices of opposition must be lodged before such day, and persons opposing are entitled to four weeks' notice of the hearing (see Privy Council Rules).

For form of petition, &c., see App. A.

Sect. 26.*Revocation.*

Revocation
of patent.

26. (1.) The proceeding by *scire facias* to repeal a patent is hereby abolished.

(2.) Revocation of a patent may be obtained on petition to the Court.

(3.) Every ground on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action for infringement, and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(a.) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland.

(b.) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland.

(c.) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims.

(d.) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee.

(e.) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the Court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the Court or a judge. Sect. 26.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

The proceedings by *scire facias* to repeal a patent were proceedings taken in the common law side of the Court of Chancery, and commenced by a writ of *scire facias* (see Hindmarch on Patents, p. 376). *Scire facias.*

The revocation of a patent is now to be obtained by a petition to the Court, *i.e.*, the High Court of Justice (sect. 117).

All letters patent contain a proviso giving power to the Queen or any six of the Privy Council to revoke the patent for certain causes therein specified.

Any objection that might be taken to a patent in an action for infringement, is also a ground for revocation (see note, sect. 29, and Form of Particulars of Objections, App. A.). *Grounds of action for infringement, is also a ground for revocation.*

Proceedings by *scire facias* to repeal a patent could be taken by anyone, as an illegal patent was regarded as prejudicial to all the public. Under this section a person can of right present a petition for repeal only in the three cases mentioned in sub-sect. 4 (*c.*), (*d.*), (*e.*). If he does not come under one of these classes, he must obtain the authority of the Attorney-General in England or Ireland, or of the Lord Advocate in Scotland. *Who may present petition.*

No rules have been issued affecting proceedings under this section. *Practice.*

The petition is to be addressed to the High Court of Justice, and ought to contain a concise statement of the

Sects. 26, 27. material facts, but not the evidence by which it is to be proved. It is to be divided into paragraphs.

It must be accompanied by particulars of objections, and no evidence can be admitted, except by leave, in proof of any objection of which particulars are not so delivered.

See further as to petitions, Williams on Petitions, and Seeton, I., p. 50.

Crown.

Patent to
bind
Crown.

27. (1.) A patent shall have to all intents the like effect as against her Majesty the Queen, her heirs and successors, as it has against a subject.

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

Though letters patent have usually contained a clause stipulating that the patentee shall supply, for the service of the Crown, all such articles included in the invention as may be required, upon such reasonable terms and prices as may be settled by the officers administering the various departments of the service, otherwise the patent was to be void, yet it was decided in *Feather v. The Queen*, 6 B. & S. 257, and affirmed in *Dixon v. The London Small Arms Company Limited*, L. R. 1 App. Cas. 632, that letters patent do not bind the Crown, since the privilege granted is as against subjects only, and therefore the Crown might use the patent without any licence from or remuneration to the patentee.

This is now altered, and henceforth letters patent are to be valid against the Crown, subject to the proviso of sub-sect. (2). The terms on which the Crown are to be allowed to use the patent are to be settled by agreement and approved of by the Treasury; but in default of

agreement the Treasury itself may settle them. The Crown may call upon the patentee to supply, or cause to be supplied, the articles comprised in the invention, at prices, &c., to be settled under this section, otherwise the patent will be void (see form of patent, Form D, Sched. 1.)

**Sects.
27, 28.**

It will be observed that the Crown may enforce this section as soon as an application for a patent is made.

Legal Proceedings.

28. (1.) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court shall otherwise direct.

Hearing
with
assessor.

(2.) The Court of Appeal or the Judicial Committee of the Privy Council (a) may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid.

(3.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court or the Court of Appeal or Judicial Committee, as the case may be, and be paid in the same manner as the other expenses of the execution of this Act.

The High Court of Justice and Court of Appeal are by sect. 56 of the Judicature Act, 1873, empowered to "call in the aid of one or more assessors specially qualified" to assist in trying "any question arising in the cause or matter other than a criminal proceeding by the Crown." Order XXXVI. Rule 43, of the Rules of the Supreme Court, 1883, states that "Trials with assessors shall take place in such manner and upon such terms as the Court or judge shall direct."

Assessors
under
Judicature
Acts.

This section goes beyond these provisions, as it not

Right of
parties to
assessor.

(a) See s. 25.

Sects. 28, 29. merely authorises the Court to call in an assessor, but gives either of the parties to the proceedings a right to have an assessor, except in the Court of Appeal or the Judicial Committee of the Privy Council.

Jury only by leave. By Order XXXVI. Rule 6, Rules of Supreme Court, 1883, an order for a jury may be obtained on application, but the right is restricted by this section, and a jury can only be obtained in actions for infringement by order of the Court.

Delivery of particulars. **29.** (1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the judge, at any subsequent time, particulars of the breaches complained of (a).

(2.) The defendant must deliver with his statement of defence, or, by order of the Court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof (a).

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended, by leave of the Court or a judge (β).

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a judge to have been proven or to have been reason-

(a) For Form of Pleadings, see App. A.

(β) See R. S. C. 1883, O. XIX. 7, 8.

able and proper, without regard to the general costs Sect. 29.
of the case.

By the new Rules of the Supreme Court, 1883, the Pleadings forms of Statements of Claim and Defence in actions for infringement of patents have been greatly shortened, for in-
see App. A. The statement of claim now consists fringe-
merely of the allegation that the defendant infringed ment.
the plaintiff's patent, the number and title of the patent being given, and asks for an injunction and damages. The defence consists of a series of denials of any matter of fact affecting the validity of the patent. See Forms in App. A. The real pleadings are contained in the Particulars.

Particulars of breaches must be delivered with the Particulars statement of claim, and no evidence can be given of any of breaches.
infringement of which particulars are not so delivered unless by leave of the Court or judge.

The object of particulars of breaches is to give the defendant fair and particular notice of what the complaint is against him. They are sufficient if, taken together with the pleadings, they give full notice of the plaintiff's case (*Needham v. Oxley*, 1 H. & M. 248).

The precise portion of the specification infringed ought to be pointed out by reference to pages and lines, except in the case of an alleged infringement of a particular article, where the thing alleged to be an infringement (*e.g.*, cartridges) is made an exhibit (*Batley v. Kynock*, (No. 2), L. R. 19 Eq. 229).

The particular parts of a machine that infringe the plaintiff's patent may have to be pointed out (*Jones v. Lee*, 25 L. J. Exch. 241; *Wren v. Weild*, L. R. 4 Q. B. 213).

Where particulars alleged an infringement by sale of a machine and particularly to two persons, an admission of sale to a third person was allowed in evidence (*Sykes v. Howarth*, L. R. 12 Ch. D. 826).

The object of particulars of objection is to point out Particulars the defence with greater particularity than the statement of objec-
of defence, and so prevent the plaintiff being taken by tions.
surprise at the trial. What degree of particularity is necessary depends on the circumstances of each case.

The 41st section of the Patent Law Amendment Act, 1852, required "the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent," to be stated in the particulars. A similar clause, though

Sect. 29. not worded in the same way, is contained in sub-sect. (3), requiring the time and place of prior publication or user to be stated. Under the Patent Law Amendment Act, 1852, it has been held that the defendant must furnish full and sufficient particulars.

Therefore, if prior user by other persons be alleged, the names of some of such persons must be set out (*Crossley v. Tommy*, 2 Ch. D. 533), and where the particulars stated that the process had been used by three persons, whose names and addresses were set out, and "other persons in London and Birmingham," it was ordered that the names and addresses of some of such "other persons" be given, otherwise that the words be struck out (*Flower v. Lloyd*, 20 S. J. 860). Places where the user takes place ought to be stated (*Birch v. Mather*, 22 Ch. D. 629); but where the user relied upon is a general public user, a reference to the place where such user takes place may be sufficient (*Morgan v. Fuller*, L. R. 2 Eq. 297); but see *Palmer v. Wagstaffe*, 8 Exch. 840), and remarks of Field, J., in *Flower v. Lloyd*, 20 S. J. 860. As to prior user in a colony, see *Rolls v. Isaacs*, 19 Ch. D. 268.

The words "and others" are liable to be struck out, inasmuch as the defendant can always apply to amend his particulars: but in *Penn v. Bibby*, L. R. 1 Eq. 548, the words "amongst other instances" were allowed to remain. As to the words "divers other people" (struck out), see *Fisher v. Dewick*, 1 Web. 551; "and elsewhere," see *Jones v. Bengier*, *ib.* 544.

Where evidence of prior public user comes to the knowledge of the defendant after the delivery of his particulars he should apply to amend, and if the trial has begun he may obtain such leave on short notice of motion (*Daw v. Eley*, L. R. 1 Eq. 38).

Where one of the grounds of defence is that the patentee was not the true and first inventor he need not state in the particulars who the first inventor was (*Russell v. Ledsam*, 11 M. & W. 647).

Where prior publication is alleged all the books or other publications relied on must be specified (*Bentley v. Keighley*, 7 M. & G. 652). As to publication in a foreign language, see *U. T. Coy. v. Harrison*, 21 Ch. D. 720. The pages of the publications should be specified: drawings described so as to enable them to be identified: and specifications of patents should be referred to by their date and the name of the patent, see *Plimpton v. Spiller*, 20 S. J. 860.

Where fraud or misrepresentation are relied on, the nature of such fraud or misrepresentation must be stated (*Russell v. Ledsam*, 11 M. & W. 647). Sect. 29.

In regard to other objections the following particulars have been held sufficiently precise. "That the invention is not properly set forth in the specification" (*Heath v. Unwin*, 10 M. & W. 684). "That the specification did not sufficiently distinguish between what was old and what was new" (*Jones v. Berger*, 5 M. & G. 208). That it did not state "the most beneficial method with which he was then acquainted" (*Ibid.*).

Where the particulars are too general the plaintiff cannot take this objection at the trial, and any evidence within the literal meaning of the particulars will be admitted (*Hull v. Bolland*, 1 H. & N. 134; *Sykes v. Howarth*, L. R. 12 Ch. D. 826).

Particulars of breaches or objections may be amended by leave. Sub-sect. (5.) Amend-
ment of
particu-
lars.

Even after trial has begun leave may be given to amend particulars of objection (*Daw v. Eley*, L. R. 1 Eq. 38). As to the effect of leave on the action, see *Edison Telephone Co. v. India Rubber Co.*, 17 Ch. D. 137.

Sub-sect. 6 introduces some changes.

By sect. 43 of the Patent Law Amendment Act, 1852, it was provided that "the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular unless certified by the Judge before whom the trial was heard to have been proved by such plaintiff or defendant respectively." Costs of
particu-
lars.

No alteration is made in the law so far as a certificate is made a condition precedent to the right to the costs of particulars, but,

1. The giving of the certificate is no longer restricted to the judge who tried the action. It may be obtained from "the Court or a judge."
2. The certificate is no longer to be that the particular was "proved," but that it was "reasonable and proper."

Under the Patent Law Amendment Act, 1852, it was held that the certificate was necessary, even in case of a nonsuit (*Honiball v. Bloomer*, 10 Exch. 538); and in all cases where the action comes on for trial, but not where plaintiff obtained an order before hearing to dismiss his own bill (*Batley v. Kynock*, L. R. 20 Eq. 632); or where plaintiff abandons the action (*Greaves v. Eastern Counties Railway*, 1 Ell. & Ell. 961).

Sect. 30. 30. In an action for infringement of a patent, the Court or a judge may on the application of either party make such order for an injunction, inspection, or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a judge may see fit.

Order for
inspection,
&c., in
action.

Three distinct matters are treated of in this section, 1. Injunction ; 2. Inspection, and 3. Account.

INJUNCTION
GENERALLY.

In connection with this section, reference may be made to the following provision of the Judicature Act, 1873, sect. 25, sub-sect. 8 :

“ An injunction may be granted. . . . by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made.”

Whatever can be done under this sub-sect. of the Judicature Act may also be done at the final trial of the action (*Beddow v. Beddow*, L. R. 9 Ch. D. 93). This 8th sub-sect. is wider in its terms than the present 30th sect., inasmuch as the present section is restricted to applications “in an action for infringement of a patent.” Hence an application to restrain a threatened infringement (as to which see *Frearson v. Lowe*, 9 Ch. D. 48), would require to be made under the Judicature Act, 1873, and not under this section, unless it were made “in an action for infringement.”

The following new rule relating to injunctions forms Rule 12 of Order L. of R. S. C. 1883.

“In any cause or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract : and the Court or a judge may grant the injunction, either upon or without terms, as may be just.”

I. Inter-
locutory
injunction.

The principles on which the Court will grant an interlocutory injunction were discussed by Jessel, M. R., in *Dudgeon v. Thomson*, 22 W. R. 464. The plaintiff must be prepared to show :

1. The validity of the patent : and in order to prove **Sect. 30.**
this it will be sufficient to show :

- (a.) That the patent is old and there has been active user of it (*Plimpton v. Malcolmson*, L. R. 20 Eq. 37). An injunction was granted where there had been six years' enjoyment (*Bickford v. Skewes*, 1 Web. P. C. 213), but refused where only one year's enjoyment (*Heugh v. Magill*, W. N. 1877, p. 62) ; or,
(b.) That the validity has been established, and that there is no reason why the Court should doubt the result. Hence an interdict granted in Scotland was held sufficient evidence of validity (*Dudgeon v. Thomson*, 22 W. R. 464) ; see also *Newall v. Wilson*, 2 De G. M. & G. 282 ; or,
(c.) Where the conduct of the defendant is such as to enable the Court to say that as against the defendant himself there is no reason to doubt the validity of the patent (*Dudgeon v. Thomson*, 22 W. R. 464 ; *Clark v. Ferguson*, 1 Giff. 184).

Plaintiff
must show,
1. Vali-
dity.

2. Some actual infringement (*Bridson v. MacAlpine*, 8 Beav. 230). As to a threatened infringement, see *Frearson v. Lowe*, L. R. 9 Ch. D. 48, quoted below.

2. Infringe-
ment.

An interlocutory injunction will not be granted where there has been any undue delay in coming to the Court. (*Bovill v. Crate*, L. R. 1. Eq. 388). **Must be no delay.**

Where there are numerous persons infringing the patent the proper course to pursue is for the plaintiff to proceed against one, asking all the others if they will abide the result (see *Bovill v. Crate*, L. R. 1 Eq. p. 391). **Numerous infringers.**

By R. S. C. Order L. Rule 6, an application for an interlocutory injunction under sect. 25, sub-sect. 8 of the Judicature Act, 1873, may be made by the plaintiff by motion, either *ex parte* or with notice. Generally the injunction will not be granted on an *ex parte* application except in case of emergency. A notice of motion must be a two clear days' notice, unless special leave be given to the contrary (R. S. C. Order LII. r. 5). **How obtained.**

The affidavits in support of the application must clearly and accurately set forth the legal title of the plaintiff ; that he believed at the time of making the application (not at the time the patent was obtained)

Sect. 30. the patentee was the first and true inventor, and that the invention had not been practised at the time the patent was granted (*Gardner v. Broadbent*, 2 Jur. N. S. 1041; *Whitton v. Jennings*, 1 Dr. & S. 110). The nature of the alleged infringements must also be particularly stated (*Hill v. Thompson*, 3 Mer. 622).

Terms and conditions.

This section gives a discretionary power to the Court to grant or withhold an injunction. It may be granted on an undertaking by the plaintiff to be liable for any damages the defendant may incur (*Plimpton v. Spiller*, 4 Ch. D. 286); or it may be refused upon an undertaking by the defendant to keep an account of profits (*Bridson v. McAlpine*, 8 Beav. 229; *Plimpton v. Malcolmson*, L. R. 20 Eq. 37); or it may be ordered to stand over until the trial.

The injunction will take the form of an Order of the Court (R. S. C., L. 11).

Service of order must be before 6 p.m., or on Saturdays before 2 p.m., see R. S. C., LXIV. r, 11, and it is sufficient if an office copy be exhibited, *ib.*, r. 1.

Notice may be given by telegram in cases of urgency, *Ex parte Langley, Re Bishop*, 13 Ch. D. 110.

II. Perpetual injunction.

A perpetual injunction is sometimes by consent granted on an application for an interlocutory injunction, but usually it is obtained at the final trial.

Where the obtaining of an injunction is a substantial object of the action, the writ should be endorsed accordingly, *Colebourne v. Colebourne*, L. R. 1 Ch. D. 690.

The fact that the patentee did not apply for an interlocutory injunction will not preclude him from asking for a perpetual one at the hearing, but if he did not so apply he will be required to establish a clear and unexceptional title, *Bacon v. Jones*, 4 My. & Cr. 433; *Bacon v. Spottiswoode*, 1 Beav. 382; *Patent Type Founding Company v. Walter*, John. 727.

An injunction may be obtained against the threatened infringement of a patent (*Frearon v. Lowe*, 9 Ch. D. 48), but the application would require to be made under sect. 25, sub-s. 8 of the Judicature Act, 1873, unless made in "an action for infringement."

By Lord Cairns' Act (21 & 22 Vict. c. 27, s. 2), the Court may give damages in addition to or in substitution for an injunction.

INSPECTION.

The provisions of this section in regard to inspection must be read along with the provisions of Order L. Rule 3 of the Rules of the Supreme Court, 1883. That rule

states that "it shall be lawful for the Court or Judge upon the application of any party to a cause or matter, and upon such terms as may be just to make any order for the inspection of any property or thing being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid; to authorise any samples to be taken, or any observation to be made, or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence." Sect. 30.

Inspection of the defendant's works and machinery will only be ordered where the Court is satisfied that the inspection is essential to the plaintiff's case (*Batley v. Kynock*, (No. 1), L. R. 19 Eq. 229); and may be of a limited nature, *e.g.*, restricted to one machine of each class sold (*The Singer Sewing Machine Company v. Wilson*, 13 W. R. 560); or may exclude inspection by plaintiff, (*Flower v. Lloyd*, Seton on Decrees, I. 350).

It was refused where important trade secrets would be disclosed, and the plaintiff could otherwise prove infringement (*Piggott v. The Anglo-American Telegraph Company*, 19 L. T. Rep. N. S. 46); and where the alleged infringement took place abroad (*Neilson v. Betts*, L. R. 5 H. L. 1).

An application under the above Rule 3, Order L. How obtained. cannot be made to a Master in the Queen's Bench Division, Order LIV. r. 12 (*e*).

It may be made either to a Judge in Chambers by summons, or to a Judge in Court by motion. The latter course is usually adopted. Notice of the application must be given (Ord. L. Rule 6), and two clear days must elapse between the service of notice of motion and the day named for hearing unless leave be given to the contrary (Order LII. Rule 5). The plaintiff may make the application after the issue of the writ, and any other person after he enters an appearance, Order L. Rule 6.

For notice of motion or summons, see *App. A.*, or Forms. Daniel's Chancery Forms, p. 945—7. For forms of Orders, see *App. A.* and Seton on Decrees, p. 350.

On an application for an interlocutory injunction, Account. the Court may instead of granting such injunction order Interim an account to be kept of all future sales and profits. An account of future profits.

Sect. 30. account of part profits is not generally ordered until final judgment, *Vidi v. Smith*, 3 Ell. & B. 969.

The Court has an extensive power as to ordering accounts at any stage under Rules Supreme Court, 1883. Order XXXIII. Rule 2, which states that :—

“The Court or a Judge may at any stage of the proceedings in a cause or matter direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried as to which it may be proper that the cause or matter should proceed in the ordinary manner.”

For Form of Order, see *App. A.* and Seton I. 344.

Form of
order.

Account of
past profits
at judg-
ment.

A patentee is not at final judgment entitled to both an account of profits and an inquiry as to damages against the same person, but must elect which he will take (*De Vitre v. Betts*, L. R. 6 H. L. 321) ; but he may obtain an account against persons manufacturing, and damages against persons using the articles infringing the patent, *Penn v. Biboy*, L. R. 3 Eq. 308.

The expiration of the patent before the action comes on for hearing will not deprive the plaintiff of his right to an account, *Fox v. Dellestable*, 15 W. R. 194. Regard will be had to the circumstances of the case, and an account was refused where the plaintiff delayed taking proceedings for three years after the patent had expired, *Smith v. London and South Western Railway Company*, 2 Eq. R. 428. See also *Price's Patent Candle Company v. Bauwen's Patent Candle Company*, 4 K. & J. 727, and *Betts v. Gallais*, L. R. 10 Eq. 392.

One of two joint owners is not entitled to an account as against another joint owner (*Mathers v. Green*, L. R. 1 Ch. 29) ; and a patentee cannot obtain an account against a manufacturer, as agent, who was to take a certain sum on each machine for himself and pay a royalty, *Moxon v. Bright*, L. R. 4 Ch. 292.

As to account between assignee of share of profits and licensee, see *Bergmann v. Macmillan*, 17 Ch. D. 423 : or between patentee and assigns of assignee, see *Werdermann v. Société Générale Électricité*, 19 Ch. D. 246. As to proving for profits in bankruptcy, see *Watson v. Holliday*, 20 Ch. D. 780.

In aid of an account the defendant may be ordered to produce his books for inspection, *Saxby v. Easterbrook*, L. R. 7 Ex. 207. Proceedings under an account may be stayed pending an appeal, *Adair v. Young*, L. R. 11 Ch. D. 136.

Form of
order for
account.

For Form of Order, see *App. A.* and Seton I. p. 353.

31. In an action for infringement of a patent, the Court or a judge may certify that the validity of the patent came in question; and if the Court or a judge so certifies, then in any subsequent action for infringement, the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same.

**Sects.
31, 32.**

Certificate of validity questioned and costs thereon.

The provisions of sect. 43 of the Patent Law Amendment Act, 1852, that the certificate should be given by the judge who tries the action, and be certified "on the record," that the "record with the certificate" should be given in evidence in the subsequent action, and that it might be used for a similar purpose in a proceeding by *scire facias*, are not found in this section.

The certificate may be given by "the Court or a judge," and it is not required to be given in evidence in the subsequent action.

The certificate does not apply to the costs of the first trial in which it is given, but only to subsequent suits, (*Penn v. Bibby*, L. R. 3 Eq. 308); and may be granted though the validity of the patent is not disputed in the second action, *Davenport v. Rylands*, L. R. 1 Eq. 302. See *Stocker v. Rodgers*, 1 C. & K. 99, as to refusal of certificate where verdict was taken by consent, no evidence being given.

32. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall

Remedy in case of groundless threats of legal proceedings.

Sects. 32, 33. not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

In *Halsey v. Brotherhood*, L. R. 15 Ch. D. 514, it was decided by Jessel, M.R. (affirmed on Appeal, 19 Ch. D. 386) that a patentee who threatens other persons with legal proceedings in the event of their purchasing articles alleged to be an infringement of his patent is not liable to an action for damages by the vendor, even though the statements are untrue, unless he acted *malâ fide*, i.e., without reasonable and probable cause, though he might be restrained by injunction against the continuance of such threats.

This section does away with the necessity of showing reasonable and probable cause where damages are sought, and if the alleged infringements are really not infringements, both damages and an injunction may be obtained. Any person "aggrieved" may bring the action.

The last proviso is to meet the case of the manufacture, use, or sale being an actual infringement. See *Armann v. Lund*, L. R. 18 Eq. 330.

Miscellaneous.

Patent for
one inven-
tion only.

33. Every patent may be in the form in the First Schedule to this Act, and shall be granted for one invention only, but may contain more than one claim (a); but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

The form of patent has been considerably altered to bring it into conformity with the provisions of the Act.

It is not always easy to decide whether a patent contains one invention or more than one. The examiner under sect. 6 is not required to report specially on the point whether the specification contains more than one invention, but where it does it may be open to him to report that the specification has not been prepared in the "prescribed manner," since the forms are only really applicable to "an invention."

A claim is not necessary in a provisional specification, sect. 5 (5).

(a) See s. 5.

34. (1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative (a). **Sects. 34, 35.**

Patent on application of representative of deceased inventor.

(2.) Every such application (β) must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

This section is new. Hitherto the personal representative of a deceased inventor not being the first and true inventor could not obtain a patent, *Marsden v. The Saville Street Foundry and Engineering Company (Limited)*, L. R. 3 Exch. D. 203.

Where such personal representative dies without making any application, his personal representative would not be qualified to apply for the patent, inasmuch as sub-sect. (6) requires the applicant to declare that the person from whom he obtained the invention was the first and true inventor, but where such first mentioned personal representative had duly applied within the six months, there seems to be no reason why the provisions of sect. 12, sub-sect. (6), should not apply, and the patent be granted to his personal representatives.

35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection. Patent to first inventor not invalidated by application in fraud of him.

By sect. 11 the true and first inventor can oppose the grant of a patent to a person who may fraudulently or otherwise have obtained the patent from him.

This section aims at protecting the first and true inventor after he has obtained a patent from the consequences of any fraudulent application. Its provisions were more applicable to the state of things existing

(a) See Patents Rules, 24.

(β) See Form A (Patents Forms).

Sects. 35—38. under the old law where a second fraudulent applicant might obtain a patent before the first applicant and true inventor than to the present time, when this Act contains so many other provisions protecting the first and true inventor.

Assign-
ment for
particular
places.

36. A patentee may assign (a) his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

Letters Patent being granted to the patentee and his “assigns” could always be assigned, but such assignment transferred the patent rights in their entirety. A patentee could only transfer a portion of his rights either by assigning a share of the patent (*Walton v. Lavater*, 8 C. B. N. S. 162) ; or a part of the patent (*Dunnickiff v. Mallett*, 7 C. B. N. S. 209) ; or by licensing definite persons to use it.

The Patent Law Amendment Act, 1852, empowered a patentee to assign his rights for England, for Scotland, or for Ireland.

This section goes still further, and permits the patent to be assigned for any place or part of the United Kingdom or Isle of Man.

Loss or
destruction
of patent.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed (β).

The words “or its non-production is accounted for to the satisfaction of the comptroller” are new.

The power to seal a duplicate patent is transferred from the Lord Chancellor to the comptroller.

The applicant is to state his interest in the letters patent. For form of application, see Patents Forms, Form N.

Proceed-
ings and
costs before
law officer.

38. The law officers may examine witnesses on oath, and administer oaths for that purpose under

(α) For precedents of assignments, see Appendix B.

(β) For Form of application, see Patents Forms, N. Fee 2*l*.

this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officer, and the practice and procedure before them under this part of this Act; and in any proceeding before either of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court. **Sects. 38, 39.**

Rules have already been made by the law officers, regulating appeals to them. See end of Patents Rules.

The following proceedings may be taken before the law officer under this part of the Act :— Proceedings before the law officer.

Appeals from the decision of the comptroller—

1. Refusing to accept an application, or requiring it to be amended (sect. 7 (2), (3)).
2. As to the inventions comprised in two applications being the same (sect. 7 (6)).
3. Refusing to accept a complete specification (sect. 9 (2), (3)).
4. As to opposition to the grant of the patent (sect. 11 (2), (3), (4)).
5. As to amendment of specification (sect. 18 (3), (4), (6), (7)).

By R. S. C., O. XLII. r. 24, "Every order of the Court or a judge in any cause or matter may be enforced against all persons bound thereby, in the same manner as a judgment to the same effect." Costs.

As to enforcement of an order to pay costs by *fi. fa.* or *elegit*, see R. S. C., O. XLII. r. 17.

By sect. 146 of the Bankruptcy Act, 1883, a writ of *elegit* no longer extends to goods.

If costs before law officer be not paid within fourteen days, an order for payment under sect. 38 will be made (Rules as to Appeals to Law Officer, 12).

39. The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention Exhibition at industrial or international exhibition not to pre-

**Sects.
39, 40.**

judice
patent
rights.

for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor, or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention, or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely,—

- (a.) The exhibitor must, before exhibiting the invention, give the comptroller the prescribed notice (a) of his intention to do so ; and
- (b.) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

This section is practically a re-enactment of the provisions of the 28 Vict. c. 3, relating to industrial exhibitions, and the 33 & 34 Vict. c. 27, relating to international exhibitions, both of which Acts are repealed in the third schedule to this Act.

Notice.

Any person desirous of exhibiting or of publishing a description of an invention under this section, is to obtain from the Board of Trade a certificate that the exhibition is an industrial or international one, and then give to the comptroller seven days' notice in Form O (Patents Forms) of his intention to exhibit, publish, or use the invention. The notice requires a 10s. stamp. A brief description of the invention, accompanied, if necessary, by drawings, is to accompany the notice (Patents Rules, 17).

Publication
of illustrat-
ed journal,
indexes,
&c.

40. (1.) The comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the

(a) Patents Forms, O.

comptroller may deem generally useful or im- Sect. 40.
portant.

(2.) Provision shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents for the time being in force, with their accompanying drawings, if any.

(3.) The comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

The illustrated journal referred to in this section is to be distinguished from the official journal.

“The Commissioners of Patents Journal” was discontinued after the Act came into operation, and its place The Official Journal. was taken by “The Official Journal of the Patent Office,” now issued twice a week, on Tuesdays and Fridays. This official journal is strictly confined to proceedings under this Act. In it appear all official notices and advertisements required by the Rules under the Act.

“The Illustrated Journal” will be a new and addi- The Illustrated Journal. tional publication.

By Patents Rule 31, “Every applicant for the grant of a patent shall, in addition to the drawings to be furnished with his complete specification, furnish the comptroller with a drawing illustrative of the feature or features of novelty constituting his invention. Such drawing must be prepared in the manner prescribed for the copy of the original drawing or drawings accompanying the specification (see Patents Rules, 28—30, and note to sect. 5), but must not cover a space exceeding sixteen square inches. The drawing must be accompanied by a concise explanatory statement on foolscap paper, and legibly written or printed.

“The Trade Marks Journal” continues to be pub- The Trade Marks Journal. lished. It contains notices of all applications for trade marks, of all registrations, and of cancellations of registration. The “Official Journal” relates to trade marks as well as to patents and designs.

Sects. 40—42.	The following Indexes have been published by the Patent Office :—
Indexes.	<p>1. As to patents enrolled from 1617 to Sept. 1852— Chronological Index. 2 vols. Alphabetical Index. 1 vol. Subject-Matter Index. 2 vols. Reference Index, pointing out the office in which each enrolled specification may be consulted, and the books in which specifications, &c., have been noticed. 1 vol. Appendix to the Reference Index of Patents, containing abstracts from such early patents and signet bills as, in absence of specifications, describe the nature of the invention. 1 vol.</p>
Abridgments.	<p>2. As to patents recorded since 1852— Chronological Index. Alphabetical Index. Subject-Matter Index.</p>
Specifications.	Abridgments (in classes, and chronologically arranged) of all specifications of inventions, from the earliest enrolled to those published under the Act of 1852, have also been published.
Monthly indexes.	<p>Volumes of Specifications of Letters Patent and Provisional Specifications have been published since 1876. A Monthly Index of names of applicants since 1882. A Monthly Index of Subject-Matter compiled from titles of inventions since 1882.</p>
Patent Museum.	<p>All the above publications may be consulted at the Free Library of the Patent Office from 10 to 4, or at the Library of the Patent Museum, South Kensington, at the Free Library, Manchester, and in the chief towns throughout the kingdom.</p> <p>41. The control and management of the existing Patent Museum, and its contents shall from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as Her Majesty in Council may see fit to give.</p>
Power to require models on payment.	<p>Hitherto the Patent Museum has been under the direction of the Commissioners of Patents.</p> <p>42. The Department of Science and Art may at any time require a patentee to furnish them with a</p>

model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade. **Sects.**
42—43.

This section is new.

43. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of Her Majesty's Courts in the United Kingdom or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man. **Foreign
vessels in
British
waters.**

(2.) But this section shall not extend to vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its Courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

The corresponding section (s. 26) of the Patent Law Amendment Act, 1852, was the result of the decision in *Caldwell v. Vanvliessen*, 9 Hare, 415, in which it was held that a foreign vessel could not use in British waters, without a licence, a screw propeller patented in England.

This section authorises a foreign vessel in English waters to use, for the purposes of navigation, inventions patented in this country, subject to two conditions :—

1. That the invention is not used for or in connexion with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man.

**Sects.
44, 45.**

(11.) The Secretary of State may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

This section is practically a re-enactment of the 22 Vict. c. 13.

Inventions assigned to the Secretary of War under this section are exempt in many ways from the other provisions of the Act, *e.g.*, the invention may be assigned before any application is made for a patent (sub-sect. 3); no proceedings lie for revocation of a patent assigned and certified under sub-sect. 3 (sub-sect. 9); no copy of the specification is published (sub-sect. 10), and the communication to the Secretary of War of an invention does not amount to a publication (sub-sect. 12).

Existing Patents.

Provisions
respecting
existing
patents.

45. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act (α).

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to compulsory licences (β).

(3.) In all other respects (including the amount and time of payment of fees) (γ) this Act shall

(α) 1st January, 1884. See
s. 3.

(β) See s. 22.
(γ) See Schedule 2.

extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed. **Sects. 45, 46.**

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the Patent Office.

A notice has been issued by the Patent Office to the effect that all "applications" for patents made previous to this Act coming into operation are to be proceeded with in accordance with the old rules. This is adopting the view that the words "proceedings thereon" in sub-sect. 1 cover all proceedings up to the grant of the patent and filing of the complete specification. The 78th Rule of the Patents Rules also states that the repeal of rules therein mentioned is to be without prejudice to any application pending on the 31st December, 1883.

By sub-sect. 3, the amount and time of payment of fees specified in the Act is to apply to all patents granted before the commencement of the Act, or on applications then pending, *i.e.*, annual payments may be substituted for the two payments of 50*l.* and 100*l.*, or these two payments may be made at end of the fourth and seventh years. (See Introduction.)

The words "in all other respects" in sub-sect. 3, will then refer to proceedings after sealing, and after filing of the complete specification, *e.g.*, amendment of specification, extension, revocation, &c.

Definitions.

46. In and for the purposes of this Act—

"Patent" means letters patent for an invention :

"Patentee" means the person for the time being entitled to the benefit of a patent :

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies

Definition
of patent,
patentee,
and inven-
tion.

**Sects.
46, 47.**

(that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act concerning monopolies and dispensations, with penal laws and the forfeiture thereof"), and includes an alleged invention.

In Scotland "injunction" means "interdict."

Section 6 of the Statute of Monopolies is as follows:—
"Provided also, and be it declared and enacted, that any declaration before mentioned (*i.e.* that the grant of monopolies was contrary to the law of the realm) shall not extend to any letters patent and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patent and grants shall not use, as also they be not contrary to the law nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient: the said fourteen years to be accounted from the date of the first letters patents or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be if this Act had never been made, and of none other."

PART III.

DESIGNS.

Registration of Designs.

Applica-
tion for
registra-
tion of
designs.

47. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor (α) of any new or original design not previously published in the United Kingdom, register the design under this part of this Act.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed (β),

(α) Proprietor is defined in
s. 61.

has been substituted for Form in
Schedule.

(β) Form E of Designs Forms

and must be left at, or sent by post to, the Patent Sect. 47.
Office in the prescribed manner (a).

(3.) The application must contain a statement of the nature of the design, and the class or classes of goods (β) in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade (γ).

(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

The repeal in the third schedule of the 5 & 6 Vict. c. 100, and its amending Acts, the 6 & 7 Vict. c. 65 ; 13 & 14 Vict. c. 104 ; 21 & 22 Vict. c. 70 ; 24 & 25 Vict. c. 73 ; and the 38 & 39 Vict. c. 93, has, amongst other things, abolished the distinction between useful and ornamental designs. "It is often difficult," said the memorandum on the Bill, "to determine to which class a design belongs, while a so-called useful design might frequently be the subject of a patent, were it not for the cost it is proposed to discontinue the distinction between ornamental and useful designs, and to accept for registration *any* novel design in the proper sense of the word. Such useful designs as embrace a mechanical action would be treated as subject-matter for a patent."

Provisional registration of a design for one year is also abolished, and one fixed period of five years is substituted for the various terms of copyright permitted by previous Acts (sect. 50).

(a) Designs Rules, 12.

Rules.

(β) See classification of goods in Second Schedule to Designs

(γ) Designs Rules, 16—20. Form F (Designs Forms).

Sect. 47. The person entitled to register is “any person claiming to be the proprietor.” The word “proprietor” is defined by sect. 61, and means (see note to sect. 61)—

Persons
entitled to
register.

- a.* The author of the design.
- b.* The person who executed the design for a good or valuable consideration.
- c.* The person acquiring the design or the right to apply it.
- d.* The person on whom the property in the design devolves.

The definition of proprietor is similar to the definition contained in the 5 & 6 Vict. c. 100, s. 6, under which it was held, in *Lazarus v. Charles*, L. R. 16 Eq. 117, that a person who was not the designer, and had not purchased a design for value, was not entitled to register the design, though he had contracted to purchase articles made in pursuance of the design.

Definition
of design.

The definition of a design is given in sect. 60. The design is to be distinguished from the substance to which it is applied (*Norton v. Nicholls*, 1 Ell. & E. 761), and it may relate to a “pattern,” “shape or configuration,” or “ornament” of any substance, or to any two or more of such purposes, by whatever means it is applicable (see note to sect. 60).

Classes of
goods.

Articles have, for the purposes of registration of designs, been divided by the third schedule to the Designs Rules into thirteen classes, viz.:—

1. Articles composed wholly or partly of metal, not included in Class 2.
2. Jewellery.
3. Articles composed wholly or partly of wood, bone, ivory, papier maché, or other solid substances not included in other classes.
4. Articles composed wholly or partly of glass, earthenware, or porcelain bricks, tiles, or cement.
5. Articles composed wholly or partly of paper (except hangings).
6. Articles composed wholly or partly of leather, including bookbinding of all materials.
7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths, and oilcloths.
9. Lace, hosiery.
10. Millinery and wearing apparel, including boots and shoes.

11. Ornamental needlework or muslin, or other textile fabrics. **Sect. 47.**
12. Goods not included in other classes.
13. Printed or woven designs in textile piece goods.
14. Printed or woven designs in handkerchiefs and shawls.

A design, in order to be entitled to registration, must fulfil two conditions—

1. It must be new or original.

The Copyright of Designs Act, relating to ornamental designs (5 & 6 Vict. c. 100), used the words “new and original,” and it was held under that Act that the portrait of a well-known public character, copied from a photograph, and applied as a design upon earthenware, was not a “new and original” design within the meaning of the Act (*Adams v. Clementson*, 12 Ch. D. 714). A new combination of old designs was held to be a new and original design within the meaning of the same Act (*Harrison v. Taylor*, 4 H. & N. 815); but it would seem that the design so formed must be one design, and not several designs (*Norton v. Nicholls*, 1 Ell. & E. 761; *Mulloney v. Stevens*, 10 L. J. (N. S.) 190).

2. The design must not have been previously published in the United Kingdom.

Application for registration is to be made on Form E (Designs Forms), addressed to the Comptroller, Patent Office (Designs Branch), 25, Southampton Buildings, Chancery Lane, London. The application is to state the name and address of the proprietor, the class in which the design is to be registered, and the nature of the design, *e.g.*, whether applicable for pattern or for shape, and the means by which it is applicable. It may be signed by an agent. It must bear the proper stamp, *i.e.*, for one design for single articles (except for classes 13, 14), 10s.; for classes 13, 14, 1s.; for one design for a set of articles in a class, 1l. A sketch or drawing of the design, and three exactly similar drawings, photographs, or tracings of the design, or three specimens of the design (provided articles to which designs are applied can be pasted into books) are to be sent with the application. The sketches, drawings, or tracings, are to be fixed. The application, as well as all drawings, sketches, photographs, or tracings of the design, are to be on strong wide-ruled foolscap paper (on one side only) of the size of 13 inches by 8 inches, leaving a margin of not less than one inch and a half on the left-hand part, and are to be signed by

Designs entitled to registration.

1. Must be new or original.

2. Must not have been published in United Kingdom.

Practice on application.

Sects. 47, 48. the applicant or his agent. All documents may be sent by post. The receipt of the application will be acknowledged. If the application be accepted, a certificate of registration will be forwarded. Before refusing an application, the comptroller gives ten days' notice to the applicant. If the applicant desires to be heard, he is to notify the comptroller within five days from the date the notice would have been delivered in the ordinary course of post. (See Designs Rules, 7—15.)

Appeal to
Board of
Trade.

If the applicant desires to appeal to the Board of Trade from the refusal of the comptroller to register a design, he is, within one month from the date of the comptroller's decision, to leave at the Patent Office, Designs Branch, a notice of appeal in Form F (Designs Forms), bearing a 1*l*. stamp, accompanied by an unstamped copy. A statement of the applicant's case and of the grounds of appeal, is to be left with the notice. A copy of the notice is also to be sent to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London. The Board will give directions as to the hearing, and appoint a day for hearing, of which seven days' notice will be given, unless the Board direct shorter notice. (Designs Rules, 16—20.)

Drawings,
&c., to be
furnished
on applica-
tion.

48. (1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design (*a*) sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design (*β*).

(2.) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not, in his opinion, suitable for the official records.

For the regulations as to drawings, &c., see note on Practice on Application, under sect. 47.

Where the articles to which designs are applied are not of a kind that can be pasted into books, drawings,

(*a*) Three, in addition to original drawing (Designs Rules, 9).

(*β*) See note, s. 47.

photographs, or tracings of such designs are to be furnished. Sects.
48—50.

As to size of drawings, see note to last section and Designs Rules, 8.

49. (1.) The comptroller shall grant a certificate of registration to the proprietor of the design when registered (a). Certificate
of registra-
tion.

(2.) The comptroller may, in case of loss of the original certificate (β), or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

A certificate granted under this section will be evidence of the registration. It is to be distinguished from a certificate of any matter or thing which the Comptroller is authorised to do, and which may be obtained under sect. 96, and Designs Rules 34, by any one requiring it. Application for this last-mentioned certificate is made in Form J. (Designs Forms), the fee being five shillings. See note to sect. 96.

Copyright in registered Designs.

50. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act (γ), have copyright in the design during five years from the date of registration (δ). Copyright
on regis-
tration.

(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design (ϵ); and if he fails to do so, the comptroller may erase his name from the re-

(a) In Form G (Designs Forms).
(β) Form of Request, see
Designs Forms, H. Fee 1s.
(γ) *E.g.*, as to marking regis-

tered designs, s. 51.
(δ) *I.e.*, the date of applica-
tion (Designs Rules, 21).
(ϵ) Three (Designs Rules, 9).

Sects. 50, 51. gister, and thereupon his copyright in the design shall cease.

Term of copyright.

Under previous Acts the period during which copyright in a design lasted, varied from five years to twelve months, according to the nature of the design, and the class of goods for which it was registered. This section fixes five years as the term of copyright for all designs.

The proviso, 'subject to the provisions of this Act,' refers chiefly to the furnishing of exact specimens before delivery or sale (sub-sect. 2), the marking the design on articles sold (s. 51), and the cesser of copyright under sect. 54.

Copyright is defined by sect. 60 as "the exclusive right to apply a design to any article of manufacture, or to any substance as aforesaid" (*i.e.*, as mentioned in the definition of 'Design'), "in the class or classes in which the design is registered."

**Furnish-
ing comp-
troller with
exact repre-
sentations
or speci-
mens.**

By sect. 48, and Designs Rules 9, the applicant may on application, either furnish three drawings, tracings, or photographs of the design, or he may furnish three specimens of the design, unless the articles to which the design is applied cannot be pasted into a book. If he adopts the former course, then under sub-s. (2) of this section, he must, before delivery on sale of any articles to which the design is applied, furnish three specimens of the design, otherwise he loses copyright in the design.

**Marking
registered
designs.**

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark (a), or with the prescribed word or words or figures denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Two marks have been prescribed under this section by Designs Rules, 32. Articles in classes 13 and 14, *i.e.*,

(a) "R^d." and number on cer- 1—12; "REG^d." for classes 13,
tificate of registration for classes 14.

printed or woven designs on textile piece goods, handkerchiefs, and shawls, are to be marked with "REG^D," articles in other classes to be marked with "R^D," and the number on Certificate of registration. Sects. 51, 52.

52. (1.) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller, or by the Court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee (a); and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof. Inspection of registered designs.

(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee (β).

This and the following section regulate the rights of third parties in regard to the register. Under certain conditions any person may whilst the copyright is existing,

1. Inspect the register (sub-s. (1)).
2. Obtain a certificate of the existence of the copyright (sect. 53),

and when copyright has ceased, any person may

3. Inspect the register and copy the design (sub-s. (2)).

A third party can only inspect the register whilst the copyright continues under the following conditions:— Inspection of register.

1. Where he is authorised in writing by the proprietor, by the comptroller, or by the Court.
2. Where he furnishes information sufficient to enable the comptroller to identify the design.
3. Where the comptroller or other officer is present.

(α) No fee has been as yet prescribed.

hour (see first schedule to Designs Rules).

(β) 1s. for each quarter of an

**Sects.
52—54.**

Inspection
after expi-
ration of
copyright.

4. When a fee is paid.

No copy of the design can be taken.

Any one may inspect the register where copyright has ceased on paying a fee of 1s. for each quarter of an hour, and obtain a copy of the design on paying a fee according to agreement. See Designs Rules, 33.

If a doubt exists as to whether the copyright has expired or not, then advantage can be taken of the following section (53).

Informa-
tion as to
existence
of copy-
right.

53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee (a), it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

This section enables anyone who desires to obtain a copy of a design after the copyright has expired, to ascertain when that will take place. Application is made in Form N. (Designs Instructions, 13).

The fee payable is 5s.

By Designs Rules, 35, the comptroller may, on receipt of prescribed fee (5s., probably: no fee is mentioned in Schedule except fees under this section), search among designs registered after the commencement of the Act, and inform any person requesting him so to do, whether a particular design produced by such person, and to be applied to goods in any particular class, is or is not identical with, or an obvious imitation of any design applied to such goods, and registered since the commencement of the Act.

Cesser of
copyright
in certain
events.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

(a) 5s. See first schedule to Designs Rules.

This section corresponds to sect. 22, relating to compulsory licences in the case of patents. Its object is to prevent persons who do not carry on manufactures in this country, from registering designs with a view of preventing the use of such design within the realm. Sects. 54, 55.

‘Country’ must be taken to mean the United Kingdom.

It is doubtful what extent of user is required under this section. A nominal user would amount to an evasion of the object of the statute, and it would therefore seem that a substantial user, taking into account all the circumstances of the case, is what ought to be required. A substantial user does not necessarily imply a continual user.

Register of Designs.

55. (1.) There shall be kept at the patent office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs (α), notifications of assignments and of transmissions (β) of registered designs, and such other matters as may from time to time be prescribed (γ). Register of designs.

(2.) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

The Register of Designs will be deemed a continuation of previous registers (sect. 114, sub-sect. 2).

Certified and sealed extracts from the register are receivable in evidence, sect. 90.

The registered proprietor has not only copyright in the design (sect. 58), but such registered proprietor has, subject to any rights appearing on the register, power to assign, license, or otherwise deal with the design (sect. 87). Effect of registration.

All licences, assignments, and transmissions ought therefore to be registered as soon as possible.

The name and address of the registered proprietor are in the first instance entered on the register on sealing the certificate of registration (Designs Rules, 21). Names and addresses. New

(α) Designs Rules, 21.

(β) Designs Rules, 22—25.

(γ) *E.g.*, Orders of Court. Designs Rules, 28.

Sects. 55—57. addresses will be entered, and clerical errors corrected on application being made in Form M. (Designs Forms), the fee being 5s.

Assign-
ments and
transmis-
sions.

The rule as to registration of assignments or transmissions applies where any share or interest is acquired, or where a person acquires any right to apply the design either exclusively or otherwise, see Designs Rules, 22.

The person entitled is to make application in Form K. (Designs Forms), stamped with the same fee as on registration (*i.e.*, for a design for single articles in classes 13 and 14, 1s., for other classes, 10s. : for a design for a set of articles in a class, 1l.). The particulars of title must be stated. Such particulars will relate in case of the design passing by will, to the probate of the will ; in intestacy, to the letters of administration ; on bankruptcy, to the trustee's certificate of appointment (Bankruptcy Act, 1883, s. 54) ; by assignment, agreement, or licence, to such assignment, agreement, or licence.

The application is to be accompanied by a declaration verifying the statements therein. Such declaration may be made, and the application signed by an agent duly authorised, to the satisfaction of the comptroller. (Designs Rules, 23—25). See also, s. 87.

Orders of
Court.

Orders of Court rectifying register are to be entered (Designs Rules, 28).

Fees.

Fees on
registra-
tion, &c.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade ; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct.

For list of fees prescribed under this section, see 1st Schedule to Designs Rules.

Industrial and International Exhibitions.

Exhibition
at indus-
trial or

57. The exhibition at an industrial or international exhibition, certified as such by the Board of

Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with ; namely,—

**Sects.
57, 58.**

inter-
national
exhibition
not to
prevent or
invalidate
registra-
tion.

(a.) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice (a) of his intention to do so ; and

(b.) The application for registration must be made before or within six months from the date of the opening of the exhibition.

This section is practically a re-enactment of sect. 4 of the 28 & 29 Vict. c. 3 (1865), and sect. 3 of the 33 & 34 Vict. c. 27 (1870), repealed in the 3rd schedule to the Act.

The person desirous of exhibiting the design or article is first to obtain a certificate from the Board of Trade that the Exhibition is an industrial or international one, and then seven days before exhibiting the design or article, or publishing a description of it, he is to give notice to the Board in Form L. (Designs Forms), bearing a 5s. stamp, of his intention to exhibit or publish. A brief description of the design must be given, as well as a sketch or drawing of the same. (Designs Rules, 36.)

Legal Proceedings.

58. During the existence of copyright in any design—

Penalty on
piracy of
registered
design.

(a.) It shall not be lawful for any person without the licence or written consent of the registered proprietor to apply such design,

(a) Form L (Designs Forms). Fee 5s.

**Sects.
58, 59.**

or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered for purposes of sale to any article of manufacture, or to any substance artificial or natural or partly artificial and partly natural; and

- (b.) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the proprietor of the design, who may recover such sum as a simple contract debt by action in any Court of competent jurisdiction.

Action for
damages.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale, or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

These two sections define what amounts to piracy of a design, and the remedy of the registered proprietor.

Piracy of a
design.

- (a.) The application of a design to any substance is made piracy, provided it be for "purposes of

sale," and the application be "in the class or Sect. 59.
 classes of goods in which such design is regis-
 tered." It would thus appear that the applica-
 tion of a design where no sale is intended is no
 infringement of copyright, nor even the appli-
 cation for sale where the application is to other
 classes of goods than those for which the design
 is registered.

"purpose of sale" is not to be restricted to sale
 within the time during which copyright exists,
 but means sale at any time (*McCrea v. Holdsworth*, L. R. 6 Ch. 418).

Ignorance of the registration of a design would
 not be a good defence.

(b.) The publishing or exposing for sale of any article
 to which the design has been applied is piracy
 if the person offering for sale knew that the
 design had been applied without the consent of
 the registered proprietor.

For the corresponding sections of the 5 & 6 Vict. c.
 100, see Copinger on Copyright, 2nd ed. p. 434. Sect. 7
 of that Act used the words "cause to be done," which
 are not found in the present section, and as to which
 see *Mallet v. Howitt*, W. N. (1879), 107.

Where the copyright has been infringed the registered
 proprietor may either sue for the penalty given by Remedies
for piracy.
 sect. 58 or bring an action for damages under sect. 59.

The penalty of not more than 50*l.* may be recovered 1. Action
for penalty.
 as if it were a simple contract debt.

In England an action may be brought either in a
 County Court or in the High Court of Justice. But
 if proceedings are taken in the High Court, then by
 sect. 5 of the County Courts Act, 1867, incorporated
 into the Judicature Act of 1873 by sect. 67, the plaintiff
 if he recovers a sum not exceeding 10*l.* may not be
 entitled to any costs, unless the Judge certify that
 there was sufficient reason for bringing such action in
 the Superior Court.

The infringement of copyright in a design is to be
 regarded as a tort, notwithstanding the fact that sect. 58
 says the penalty is to be recovered "as a simple con-
 tract debt." These words have reference to the pro-
 cedure to be adopted, and it is submitted that the
 action could not be said to be "founded on contract"
 either within the meaning of the above section of the

Sects. 59, 60. County Courts Act, 1867, or Order LXV. Rule 12 of the R. S. C. 1883.

In Scotland proceedings may be taken either in the Sheriffs' Court or the Court of Session. As to the practice in Court of Session, see Mackay's *Practice*.

In Ireland proceedings may be taken either in the Civil Bill Court of the county or in the High Court of Justice.

2. Action
for
damages.

Instead of proceeding under sect. 58 the registered proprietor may elect to bring an ordinary action for damages.

By the 21 & 22 Vict. c. 70, s. 8, which is repealed by the present Act, an action for damages for infringement of the design might have been brought in a County Court.

No provision is made for delivery up of unsold articles to which a pirated design has been applied, but see *McCrea v. Holdsworth*, 2 De Gex & Sm. 497.

Definitions.

Definition
of
"design,"
"copy-
right."

60. In and for the purposes of this Act—

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

The above definition of a design is practically taken from the definition of an ornamental design contained in 5 & 6 Vict. c. 100, s. 3. The definition of a useful design was by the 6 & 7 Vic. c. 65, s. 2, restricted to designs for "shape" or "configuration": as to which see *Reg. v. Russell*, 16 Q. B. 810, and *Margetson v. Wright*, 2 De G. & Sm. 420. Sects. 60, 61.
"Design."

This distinction is now abolished, and it is immaterial whether the design be useful or ornamental.

By the 13 & 14 Vic. c. 104, s. 6 (now repealed), sculpture and models might be registered by the Registrar of Designs. This power has been omitted in the present Act, as on an average only three designs a year had been registered for several years.

The right obtained is not to apply the design to "Copy-any article but only to articles in the class or classes right." in which it is registered.

61. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise. Definition
"of proprietor."

This definition is taken from sect. 5 of the Copyright of Designs Act, 1842.

Four persons are here mentioned as coming under the term "proprietor."

1. The author of the design.
2. A person acquiring it for a good or valuable consideration.
3. A person acquiring a limited right in it for value.
4. A person on whom it devolves.

Sect. 62.

PART IV.

TRADE MARKS.

Registration of Trade Marks.

Applica-
tion for
registra-
tion.

62. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed (α), and must be left at, or sent by post to, the Patent Office in the prescribed manner (β).

(3.) The application must be accompanied by the prescribed number (γ) of representations of the trade mark, and must state the particular goods or classes of goods (δ) in connexion with which the applicant desires the trade mark to be registered.

(4.) The comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade (ϵ), who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court (ζ); and in that event the Court shall have jurisdiction to hear and determine the appeal, and may make such order as aforesaid.

A trade mark is defined in sect. 64.

Practice on
applica-
tion.

An application for registration of a trade mark is

(α) Form F, Sched. 2. Trade
Mark Rules, 4.
(β) Trade Mark Rules, 7—16.
(γ) Three, for classes 1—22
and 36—50; four, for classes 23

—35.

(δ) Trade Mark Rules, 20—24.

(ϵ) *Ib.* 23.

(ζ) Trade Mark Rules, 23.

made on Form F (Trade Marks Forms), stamped with Sect. 62.
a 5s. stamp.

Stamped forms may be obtained at the Patent Office and the chief post offices in the United Kingdom (for list of places, see Trade Mark Instructions). A separate application must be made for each class. The application may be signed by the applicant or an agent duly authorised in writing (Trade Mark Instructions, 12). If the applicant be a firm, a member may sign as "a member of the firm." In the case of a company, the secretary or other principal officer may sign "For the company." An agent must sign as "agent" (Trade Marks Rules, 7, 8, Instructions, 12). The application is to contain a representation of the mark, and three additional representations for such class on Form G (Trade Marks Forms) are to accompany it, except in application to register marks in Classes 23 to 35 inclusive, where the number of additional representations is to be two for each class. If it is desired to send a representation larger than the space on the Form, then the mark is to be backed with linen and folded and affixed to the Form (Trade Marks Instructions, 17; Rules, 13).

Where the mark consists of or includes words printed in other than Roman characters, a translation of such words is to be given at the foot or back of the application Form and of each additional representation (Trade Marks Rules, 15; Instructions, 15).

In the case of marks on metal goods, other than Metal cutlery, edge tools and raw steel, it should be stated in goods. the application of what metal or metals the goods are made (Trade Marks Rules, 12; Instructions, 14).

When the application relates to classes 23—25 (*i.e.*, Cotton goods. cotton, yarn or thread, cotton piece goods and other cotton goods), the applicant is to state by what name the mark claimed would be referred to in the invoices of his house (Trade Mark Instructions, 15).

Where a series of marks is being registered under Series of sect. 66, a representation of each mark of the series is to marks. be made or affixed upon the application form and also upon the necessary number of additional representation forms (Trade Marks Rules, 14; Instructions, 18).

Where there is an indication on the face of the mark Restriction of the goods to which the mark is applied, the claim for of claim. registration must be restricted to those goods only (Trade Mark Instructions, 32).

Sect. 62.

Applica-
tion may
be sent by
post.

The application may be sent by post, addressed to the Comptroller, Patent Office, Trade Marks Branch, 25, Southampton Buildings, London, W.C., and its receipt will be acknowledged (Trade Marks Rules, 9, 16; Instructions, 8). The day on which the application is received will, if the mark be registered, be the date of registration (Trade Marks Rules, 32).

Advertise-
ment of
applica-
tion.

The application will be advertised in the Trade Marks Journal, and on the demand of the comptroller the applicant is required to furnish a wood block or electrotpe for each mark in each class, except Classes 23—25, relating to cotton goods, for which no blocks or electrotypes are required. In the case of a series, a wood block or electrotpe is to be furnished for each mark of each class claimed. The wood block or electrotpe is not to exceed $8\frac{1}{2}$ inches broad by 10 deep, and where it exceeds 2 inches in depth an additional charge is payable of 2s. for every inch or part of inch beyond the 2 inches. The wood block or electrotpe must correspond *exactly* with the representation of the mark, and the number given by the comptroller is to be marked on the side. The blocks or electrotypes will not be returned (Trade Marks Rules, 25—28; Instructions, 21—28).

Accept-
ance.

A mark will not be registered until two months after its advertisement, and then if there be no opposition, the comptroller may enter it upon the register on receipt of the prescribed fee, *i.e.*, 1*l.* for each mark for each class; for a series of marks, 1*l.* for the first, and 5s. for every additional mark in each class. The fee is to be paid by sending Form I (Trade Marks Forms) to the comptroller stamped with the proper amount. A notice of the registration will be sent to the applicant (Trade Marks Rules, 30, 33; Instructions, 2, 21).

Death of
applicant
before re-
gistration.

If the applicant dies before the registration is completed the comptroller may, if satisfied of the applicant's death, enter on the register as proprietor, the person owning the goodwill of the business, if such ownership be proved to the satisfaction of the Comptroller (Trade Marks Rules, 31).

Refusal to
register.

The comptroller may refuse to register the mark, but before doing so he is to give the applicant ten days' notice of the time when he may be heard personally or by his agent. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant, if he desires to be heard, is to give the comptroller notice to that effect (see Forms used in case

of Patents, Form E). The applicant will be heard on the day appointed and the decision will be notified to him (Trade Marks Rules, 17—19). **Sects. 62—64.**

If the final decision be adverse to the applicant he may, within one month from the date of the decision, appeal to the Board of Trade by giving notice at the Patent Office in Form H (Trade Marks Forms) bearing a 1*l*. stamp. The notice is to be accompanied by a statement of the grounds of appeal and of the applicant's case in support, written upon foolscap paper (one side only), with a margin of two inches on the left hand side. A copy of the notice of appeal is to be sent to the Secretary of the Board of Trade, 7, Whitehall Gardens, London. If the Board of Trade hear the appeal they will give seven days' notice (or shorter notice if they think fit) to the comptroller and applicant, and will also give directions as to evidence. If the Board refer the appeal to the Court they will give directions as to how it is to be so referred (Trade Marks Rules, 20—24). Appeal to Board of Trade.

As to registering the same mark more than three times, see sect. 72.

As to registering additions, see sect. 74.

As to the effects of registration, see sects. 75—77.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned. Limit of time for proceeding with application.

This section is new. The Trade Marks Acts of 1875—77, did not contain any provisions relating to failure to proceed with an application.

The section is restricted to applications not completed "by reason of default on the part of the applicant," and will not apply to applications not completed through other causes, such as by appeal to Board of Trade.

64. (1.) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars (a):— Conditions of registration of trademark.

(a.) A name of an individual or firm printed, im-

(a) See Instructions, 7, 29—32.

Sect. 64.

pressed, or woven in some particular and distinctive manner ; or

(b.) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark ; or

(c.) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

(2.) There may be added to any one or more of these particulars any letters, words, or figures, or combination of letters, words, or figures, or of any of them.

(3.) Provided that any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before the thirteenth day of August, one thousand eight hundred and seventy-five (a), may be registered as a trade mark under this part of this Act.

Changes in definition.

This section extends the definition of a trade mark contained in the Trade Marks Act, 1875, so as to include 1. Brands. 2. Fancy word or words not in common use. It also permits a letter or figure used as a trade mark previous to the 13th August, 1875, to be now registered as an old trade mark. But a restriction is introduced in regard to written signatures or copy of written signatures of an individual or firm, which for the future must be the signatures of the individuals or firms applying for registration.

(a.) Name of individual or firm.

(a.) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner.

A name by itself could always be used as a trade mark, but such user was subject to the right of all persons of the same name to make a similar use of it, *Ainsworth v. Walmsley*, L. R. 1 Eq. 518. The disadvantage resulting from this incomplete right of user was removed by the Act of 1875, which allowed a name to be registered under the Act, provided in the words of the sub-sect. it

(a) The date of the Trade Marks Act, 1875.

was "printed, impressed, or woven in some particular and distinctive manner." Sect. 64.

The name need not be that of the individual or firm who applies for the trade mark unless the mark comes under class (b), nor of the firm who manufacture the goods to which it is applied.

Many names, even of real persons, would be treated as "fancy words," and therefore coming under class (c), where they will only be entitled to registration if not in common use.

(b.) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark. (b.) Written signatures of applicants.

The words "applying for registration thereof as a trade mark" are new (see *In re Maignen's Application*, 28 W. R. 759), and though the written signature of another individual or firm can no longer be registered under this class, yet if such signature be impressed or woven in a particular and distinctive manner it will be entitled to registration under class (a.).

This class resembles the first class in that the trade mark consists in a name, but in class (a.) any name may be chosen, and such name is to be printed, impressed, or woven in some distinctive manner, whereas in this class the name must be that of the person or firm applying for registration and is to be written.

(c.) A distinctive device, mark, brand, heading, label, ticket, or fancy words not in common use. (c.) Distinctive device, &c.

Two kinds of trade marks are here added to the corresponding part of the definition contained in the Act of 1875, viz., "brands" and "fancy words not in common use."

As to the latter, the words are introduced to meet the difficulty caused by the decision in *Ex parte Stephens*, 3 Ch. D. 659, where the late M. R. held that a word or distinctive combination of letters, such as "AEILYTON," could not be registered under this class, or indeed under the section.

Such fancy words could only be registered as old trade marks, but now any combination of letters, provided it forms a word, will be entitled to registration if it be not in common use.

A device practically means the representation of some object, such as a bell or a lion. It must, however, be "distinctive." A list of devices that in the opinion of the Trades Mark Registry Office are not distinctive, and therefore will not be registered, is contained in the "Device."

Sect. 64. "Instructions" used by the Office, see *infra*. In the instructions issued in 1878, the list included crests, but it has been held that a crest may be registered, *Beard v. Turner*, 13 L. T. N. S. 746.

A foreign word in foreign characters may be a distinctive device, *In re Rotheram's Trade Marks*, L. R. 14 Ch. D. 585.

"Mark." A mark is a more general term than device.

"Brand." Brands are now allowed to be registered, such as those used in the tobacco and sugar trades.

"Heading." Heading implies that the mark is woven or otherwise impressed at the top of a piece of goods.

In *Harter v. Souvazoglu*, W. N. 1875, pp. 11 and 101, a heading consisting of nine stripes in different colours woven into cotton goods was held to be a good trade mark.

"Label." A label is a piece of paper or some other substance affixed to the article itself or to its covering, or to the vessel containing it. It may be made distinctive by its shape or size, but generally the shape or size is only one element of the mark, the distinctive character of the label being due to a distinctive device or mark impressed upon the label.

"Ticket." A ticket differs from a label mainly in the mode in which it is fastened to the article. In the case of a label the label is so attached that every part of it adheres, whereas a ticket is usually attached by a string or wire so as to hang loosely. The "distinctive" character of the ticket must, as in the case of a label, be given to the ticket by something impressed upon it.

"Fancy word or words not in common use." Hitherto fancy words have only been allowed to be registered as old marks in use before the passing of the Trade Marks Act, 1875, *Ex parte Stephens*, L. R. 3 Ch. D. 659. They must not be words in common use, such as "Britannia" or "Victoria." The more unusual or ridiculous the word the better.

Different kinds of fancy words have been offered for registration, such as :—

Words specially invented. 1. Specially invented words, *e.g.*, "Lacto Peptine," *Carnrick v. Morson*, L. J., Notes of Cases, 1877, p. 71 ; "Cocoatina," *Schweizer v. Atkins*, 16 W. R. 1080. This class may be regarded as best fulfilling the condition that the word must not be in common use.

Foreign words. 2. Words taken from other languages, *e.g.*, "Tamar Indien," *Grillon v. Guénin*, W. N. 1877, p. 14. Such words have sometimes been registered in

class (c.), *In re Rotheram's Trade Mark*, 14 Ch. D. Sect. 64.
585. A translation of words in other than Roman characters must now accompany the application.

3. Names of places are good trade marks where they denote that the articles are made by a certain manufacturer, *e.g.*, "Anatolia," *McAndrew v. Basset*, 4 De G. J. & S. 380 ; "Glenfield," *Wotherpoon v. Currie*, L. R. 5 H. L. 508 ; and other persons making goods at such place may be restrained from using the name, *Seixo v. Provezande*, L. R. 1 Ch. 192. As to the right that may be had in a name, see *McAndrew v. Basset*, *supra*, and *Radde v. Norman*, L. R. 14 Eq. 348.
4. Initials do not amount to a "fancy word or words," but they may be registered as new marks if combined with some other distinctive mark, *e.g.*, "M & C" enclosed in a circle, *Moet v. Pickering*, 6 Ch. D. 770. They may also, by sub-sect. (3), be registered as old marks. A single letter could not be registered either as an old mark or a new mark (*In re Mitchell's Trade Mark*, 7 Ch. D. 36), under the Act of 1875, but now it may be under sub-sect. (3).

To any of the above marks may be added letters, words, or figures, or combination of such. A combination of letters may be a valid mark, though indicating quality as well as the name of the maker, *Ransome v. Graham*, 47 L. T. 218.

In the instructions issued January, 1884, by the Comptroller, it is stated that the following will not be registered under the Act, and should not appear upon the Representations of Trade Marks forming part of the application :—

The Royal arms, or arms so nearly resembling them as to be calculated to deceive.

The words "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is Forgery," "Patent," "Patented"

And that the following will not be registered as marks or as prominent parts of marks unless the marks have been used before the 13th August, 1875 :—

Representations of Her Majesty the Queen or of any member of the Royal Family.

Representations of the Royal Crown.

National Arms or Flags.

Prize or Exhibition Medals.

It is also stated that ornamental or coloured ground- Coloured

Sect. 64. work, such as tartans or checks, cannot be claimed as part of a mark unless such groundwork be included within the mark by some border or lines. See Trade Mark Instructions, 29—31.

Old marks. The object of this sub-sect. (3) is to continue the right given by the Act of 1875 of registering marks in use previous to the passing of that Act, *i.e.*, previous to 13th August, 1875, but which do not fall within the definition of the Statute. The greater number of trade marks registered under this class have been “words,” and “fancy names and words.” Inasmuch as the Act now permits fancy names not in common use to be registered, there will not be so great a necessity in the future for this proviso. Still it will permit many marks to be registered which otherwise would not have the protection given by the Act.

“Old” means old as regards the goods on which it was used (*In re Jelley's Application*, 51 L. J. Ch. 639).

Two conditions it will be observed must be fulfilled to entitle a mark to be registered under this sub-section:—(1.) It must have been used as a trade mark prior to the 13th August, 1875; and (2.) It must be “a special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures.”

The words “letter” and “figure” are new. Seven distinct kinds of marks are here enumerated:—(1) a word; (2) words; (3) a letter (under Act of 1875 it was held a letter could not be registered, *In re Mitchell's Trade Mark*, 7 Ch. D. 36); (4) a figure; (5) a combination of letters; (6) a combination of figures; and (7), a combination of letters and figures. The mark to be registered must, however, be something more than a mere word, letter, figure, or combination of such. It must be “distinctive,” and whilst distinctiveness might be present in a letter, word, or figure, owing to the shape of the writing or printing, yet as a rule some other device must accompany a letter or figure in order to make it distinctive.

Words registered as trade marks under this section must have been used by themselves and not along with other words (*In re Palmer's Application*, 24 Ch. D. 505).

The user to entitle an old mark to registration must be user in England (*In re Munch's Application*, W. N. 1883, p. 170).

Under what is known as the “Three Mark Rule,” no more than three persons can register the same old mark, on the principle that where a mark is publicly used by

more than three persons it is to be deemed common to the trade (*Benbow v. Low*, 44 L. T. 875). **Sects. 64—66.**

65. A trade mark must be registered for particular goods or classes of goods. Connection of trade mark with goods.

By the third schedule to the Trade Marks Rules goods for the purposes of trade marks registration are divided into fifty classes.

If the mark contains on its face an indication of the goods to which it is to be applied, the claim for registration must be in respect of those goods only (Instructions, 32). Indication of goods on mark.

An old trade mark may be registered for part of a class (*Ex parte Barrows*, W. N. 1877, 119), so, too, may a new mark (*In re Braby's Application*, 21 Ch. D. 223). Two similar marks may therefore be registered for different goods in same class by different persons (*Ibid*).

Where any doubt arises as to what class a particular description of goods belongs to, the doubt is to be determined by the comptroller (Trade Marks Rules, 6). See also the note at the head of the third schedule to the Trade Marks Rules.

66. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately. Registration of a series of marks.

This section is partly new, and permits a series of marks differing only in the matters mentioned to be registered as a series.

The application form must contain a representation of each mark of the series, and be accompanied by two

Sects. 66—69. copies of the series made in accordance with the provisions of Trade Marks Rules, 11 and 13.

Where the series is registered for one and the same class, a fee of 5s. is payable on the application : and on registration, a fee of 1l. for the first mark of the series, and a further fee of 5s. for every additional representation after the first. Where the series is registered for different classes, separate fees must be paid for each class (Trade Marks Rules, 1st Schedule). The fees are paid by using stamped forms.

As to advertisement of a series of marks, see note to sect. 62.

Trade marks may be registered in any colour.

67. A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

The proprietor of a trade mark has always been at liberty to print the trade mark in any colour (see *In re Worthington's Trade Mark*, 14 Ch. D. 8).

Coloured ground-work must be enclosed.

Ornamental or coloured ground work, such as tartans or checks, cannot be claimed as part of a mark unless such ground work be included within the mark by some border or lines (Trade Marks Instructions, 29).

Advertisement of application.

68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller.

The advertisement is to be inserted by the comptroller in the official paper, and if no representation of the mark be advertised, reference is to be made to a place where a specimen or representation may be seen. The applicant will be required to supply a wood block or electrotpe for the purposes of the advertisement (Trade Marks Rules, 25—27 ; Instructions, 21—28).

Two papers are published : (1) the "Official Journal of the Patents Office," and (2) the "Trade Marks Journal."

Opposition to registration.

69. (1.) Any person may within two months of the first advertisement of the application, give notice (a) in duplicate at the patent office of opposition to registration of the trade mark, and the comp-

(a) Form J (Trade Marks Forms).

troller shall send one copy of such notice to the Sect. 69. applicant.

(2.) Within two months after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter statement (α) in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3.) If the applicant sends such counter statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner (β), and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made, or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.

(4.) If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the Court (γ).

This section is taken from Rule 16 of the Rules of 1876.

The notice of opposition requires a stamp of 1*l*. It must be accompanied by a duplicate unstamped notice which will be sent to the applicant. The grounds of the opposition are required to be stated. The counter-statement may be in Form X (see Instructions); and the security for costs, if required, is to be by bond. The applicant may object to solvency of security (Instructions, 33, 34).

Where a case stands for the determination of the Court, the applicant (on being required so to do by the Manner of bringing case before the Court.

(α) Form X (Trade Marks Forms).
Forms and Instructions).

(γ) Trade Marks Rules, 29.

(β) Form Y (Trade Marks

**Sects.
69, 70.**

comptroller) is within one month to issue a summons in the High Court for an order to register the mark notwithstanding the opposition, and give notice of the same to the comptroller at the Patent Office by sending a copy of the summons bearing an endorsement of service signed by the applicant or his solicitor, or an endorsement of acceptance of service signed by the opponent or his solicitor. But the comptroller may require the matter to be decided by proceedings other than by summons.

Where the applicant fails to take the proper proceedings within the time allowed, of which failure the non-receipt of the said notice by the comptroller is sufficient proof, the application will be deemed to be abandoned (Trade Marks Rules, 29).

The person in whose favour an order is made is to leave an office copy of the order at the Patent Office, when the register will be rectified (Trade Marks Rules, 44).

**Assign-
ment and
transmis-
sion of
trademark.**

70. A trade mark, when registered, shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

**Connection
with good-
will.**

Apart from statutory enactment a trade mark can only be assigned and transmitted in connection with the goodwill of a business (*The Leather Cloth Companies Case*, 33 L. J. Ch. 199), and such is its intimate relation to the goodwill that a sale of the goodwill simply, transfers the trade marks as well (*Shipwright v. Clements*, 19 W. R. 599).

**How
assigned.**

The sale of a goodwill need not necessarily be in writing or by deed. Neither the Act nor the Rules contain any express provision as to the manner in which a goodwill with a trade mark is to be assigned. In the form of request for registration by an assignee (Trade Marks Forms, K) it is stated that "if entitled by assignment, state the particulars thereof, as, *e.g.*, by deed, dated the — day of — 188 , made between so-and-so of the one part." It is extremely doubtful whether this is sufficient to require a deed in order to assign a trade mark. Under the Act of 1875 a deed was required (see Rules, 1876, Rule 23).

When a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, he is required in order to have his name entered on the register, to make a request for such entry on Form K (Trade Marks Forms), stating his name, address, and description, and the particulars of the assignment, transmission, or other operation of law by which it has become vested in him, and further to show that it has been assigned or transmitted in connection with the goodwill of the business concerned in the classes of goods for which the trade mark was registered.

**Sects.
70—72.**

Registra-
tion of
assignee.

In the case of a body corporate the request is to be signed by an agent, and in case of a firm or partnership by a member or an agent (see note to sect. 77).

71. Where each of several persons claims to be registered as proprietor of the same trade mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the Court (a).

Conflicting
claims to
registra-
tion.

This section formed part of sect. 5 of the Act of 1875.

The Court referred to is the High Court of Justice, sect. 105.

The manner in which conflicting claims are to be submitted to the Court is by special case unless the Court otherwise order. Such special case may be submitted by the comptroller, or the parties may be required to state it. If the parties are required to state it and cannot agree, the comptroller may settle the case on receipt of the prescribed fee of 2*l*. (Trade Marks Rules, 42, 43). For form of request to settle special case, see Form T (Trade Marks Forms). The case is to be filed and proceeded with in the usual way (Trade Marks Rules, 42), as to which, see Rules of Supreme Court, 1883, Ord. XXXIV.

72. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the comptroller shall not register in respect of the same goods or de-

Restric-
tions on
registra-
tion.

(a) By special case (Trade Marks Rules, 43).

**Sects.
72, 73.**

scription of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

(2.) The comptroller shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Further
restriction
on registra-
tion.

73. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a Court of Justice, or any scandalous design.

This section formed part of sect. 5 of the Act of 1875. Three classes of marks are here stated to be disentitled to registration :

1. Mark
identical
with one
registered.

(1.) Marks identical with those on the register. Subsect. (1) will not prevent the registration of a mark identical with one on the register for a different class of goods or even for other goods of the same class (*In re Brady & Co.'s Application*, 20 Ch. D. 223).

The Court has not hitherto permitted the same old mark to be registered more than three times (*Benbow v. Low*, W. N. 1881, p. 97; see also *In re Hargreave's Trade Mark*, 11 Ch. D. 669).

2. Mark
resembling
one regis-
tered.

(2.) Marks resembling those registered.

Resemblance to marks the registration of which has not been completed is immaterial (*In re Dugdale's Trade Mark*, 49 L. J. Ch. 303).

The following cases, in which registration was refused, illustrate what is meant by marks calculated to deceive : *Allsopp v. Walker*, Sebastian on Trade Marks, p. 217, a female hand pointing horizontally was held to resemble a man's hand held upwards. *In re Worthington & Co.'s Trade Mark*, 14 Ch. D. 8, registration refused of a triangle enclosing a second triangle containing a church, the border between the two triangles having the words "Beccles Brewery" printed on it, inasmuch as a plain triangle was already on the register, and was used coloured red, and if the applicants printed their colour red, a purchaser might be misled. See also remarks of

Lord Blackburn in *Johnson v. Orr Ewing*, L. R. 7 App. Cas. 228.

Sects.
73, 74.

(3.) Marks disentitled to protection at law.

Where there is any misrepresentation in a trade mark, or where the trade itself is fraudulent, the Court will not protect a trade mark (*Ford v. Foster*, L. R. 7 Ch. 611). False statements as to origin and quality (*Pidding v. How*, 8 Sim. 477), or as to substances employed in manufacture, disentitle the owner of the trade mark to protection.

3. Marks
calculated
to deceive.

See also note to sect. 64, and Trade Marks Instructions, 29—31, for further restrictions on registration.

Terms may be imposed by the Court (*In re Whiteley's Trade Mark*, 43 L. T. 627).

As to costs of comptroller, see *In re Orr Ewing's Trade Mark*, 28 W. R. 412.

74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed (a) manner, and subject to the prescribed (a) conditions, as an addition to any trade mark—

Saving for
power to
provide for
entry on
register of
common
marks as
additions
to trade
marks.

(a.) In the case of an application for registration of a trade mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made ;

(b.) In the case of an application for registration of a trade mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made.

(2.) The applicant for entry of any such common particular or particulars must, however, disclaim in

(a) See note to sect. 62.

**Sects.
74, 75.**

his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

In the Instructions issued in 1878 it was stated—

“Terms or symbols common to a trade, such as in the iron trade the words ‘best,’ ‘best, best,’ ‘charcoal,’ ‘coke,’ ‘plating,’ ‘scrap,’ and representations of a crown or horseshoe; or in the wine and spirit trade, representations of vine-leaves, grape clusters, stars, or diamonds, are not trade marks within the meaning of the Trade Marks Registration Act, 1875 and where such terms or symbols have been used in combination with trade marks before the passing of that Act, they must be disclaimed in the statement on application.”

For the future, any distinctive device, mark, brand, &c., common to the trade, may be registered as part of an old mark, and any “distinctive word or combination of words” common to the trade, as part of a new mark. In both cases, any right to exclusive user of that part of the mark common to the trade must be disclaimed.

The definition of “common to the trade” in sub-sect. (3) adopts the principle laid down in *Benbow v. Low*, W. N. 1881, p. 97.

The addition of a common mark to a trade mark is to be made in the original application for registration; but see sect. 92 as to additions made after registration. The disclaimer of the common mark is to be written at foot or back of the Application Form and of each of the additional representations, and to be signed by the applicant or his agent (see Instructions, 19).

Effect of Registration.

Registra-
tion equi-
valent to
public use.

75. Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

In order to succeed in an action for infringement of a trade mark, it was always necessary to show that there had been an actual use of the mark in the market, which was called a public use of the mark (*Rodgers v. Nowill*, 5 C. B. 109 ; *McAndrew v. Bassett*, 33 L. J. (Ch.) 561). Registration renders it unnecessary to prove public use.

**Sects.
75—77.**

76. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

Right of first proprietor to exclusive use of trade mark.

For five years from the date of registration (*i.e.*, of application), the registered proprietor has the right to exclusive user, but such right may be disputed by any person who claims to have as good or a better title (see *Rheinhardt v. Spalding*, L. J. Ch. 57).

Right of exclusive user.

After five years, the register is conclusive as to the exclusive right of user.

Such right of user, whether during the five years or afterwards, is "subject to the provisions of this Act," *e.g.*, subject to the mark being a trade mark within the meaning of sect. 64, since registration will not prevent a defence on the ground that the mark is not a trade mark entitled to registration, either because originally it did not come within the definition or has become *publici juris* (*Ford v. Foster*, L. R. 7 Ch. 611). The mark may be removed after such five years where it ought not to have been registered (*In re Palmer's Application*, 21 Ch. D. 47). As to other provisions of the Act to which the registration is subject, see sect. 70, as to determination with goodwill ; sect. 79, as to payment of fees.

By sect. 87, the registered proprietor has, subject to any rights appearing on the register, power absolutely to assign, grant licenses as to, and otherwise deal with the trade mark. But equities in regard to the mark may be enforced.

Right of assignment, &c.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this

No proceedings for infringement of unregistered trade marks.

Sect. 77. Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request (a), and on payment of the prescribed fee (β), grant a certificate that such registration has been refused.

By sect. 1 of the Act of 1875, failure to register a trade mark before the time therein mentioned was a bar to any action of infringement. This was altered, as to old marks, by the Amending Act of 1876, which gave an action for infringement in the case of old marks where registration was refused. The present section embodies the same principle. The result is that registration is a condition precedent to an action for damages or injunction in the case of new marks, but as to old marks, a certificate of refusal or registration is required. In default of registration, old marks, therefore, are protected in the same way as if the Acts had not been passed (*In re Barrows*, L. R. 5 Ch. D. 353).

The section only applies to marks capable of being registered under the Act.

The fee for the certificate of refusal is 1*l*. In case of more than one mark, an additional fee of 10*s*. is payable for each mark. Such certificate will be *primâ facie* evidence of the refusal to register (sect. 96).

Remedy
for in-
fringement.

The remedy for infringement of a trade mark is an action for injunction and damages, or criminal proceedings under the Merchandise Marks Act, 1862.

At common law the remedy was an action for deceit, and it was necessary to show an actual intention to deceive. At equity an injunction could be obtained, and consequently recourse was had to equity rather than common law. At first equity refused redress unless actual fraud was shown; but in *Millington v. Fox*, 3 My. & Cr. 338, and *The Leather Cloth Co.'s Case*, 33 L. J. Ch. 199, it was finally settled that an actual intention to deceive need not be proved in order to obtain the aid of the Court.

- | | |
|---------------------------------------|--|
| (a) Form L (Trade Marks Forms). | 10 <i>s</i> . for each additional mark.
First Schedule Trade Marks Rules. |
| (β) 1 <i>l</i> . in case of one mark, | |

“The true guide,” said Lord Blackburn, in *Johnston v. Orr Ewing*, L. R. 7 App. Cas. 228, “is given by Lord Kingsdown in *The Leather Cloth Co. Limited v. American Leather Cloth Co. Limited*, 11 H. L. C. 538, where he says: ‘The fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader, and he cannot therefore (in the language of Lord Langdale in the case of *Perry v. Truefit*, 6 Beav. 66) “be allowed to use names, marks, letters, or other indicia by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person.” ’ ”

Sect. 77.
Principle on which Court gives relief.

In order to succeed in an action for infringement, the plaintiff must prove, (1) the existence of the trade mark; (2) the imitation of the mark by the defendant, so as to injure the plaintiff; and (3) that he has not delayed in coming to the Court.

Action for infringement.

1. Registration of a trade mark is, by sect. 76, conclusive after five years of the right of the registered proprietor to the exclusive user of the mark; and during such five years it is *primâ facie* evidence of such right. Certificates of entries on register are admitted in evidence by sect. 96.

1. The existence of the mark.

2. In proving infringement it is sufficient to show that the defendant has imitated the plaintiff's mark, so as to lead, or to be likely to lead, purchasers to believe that they were purchasing the goods of the plaintiff (see *Wotherspoon v. Currie*, L. R. 5 H. L. 508). It is not necessary that the marks should be identical, or even that the resemblance must be such as would deceive persons who saw the two marks placed side by side. It is sufficient if the “defendant's trade mark bears such a resemblance to that of the plaintiff's as to be calculated to mislead incautious purchasers.” See Lord Blackburn's remarks in *Johnston v. Orr Ewing*, L. R. 7 App. Cas. 229.

2. Infringement.

The spurious marks must have been used on goods of the same class as that for which the infringed mark is registered (*Ainsworth v. Walmsley*, L. R. 1 Eq. 518).

An innocent importer of cigars to which a spurious mark had been affixed in imitation of a registered trade mark, was held liable for infringement, and was ordered to pay costs (*Upmann v. Forrester*, 24 Ch. D. 231).

3. There must be no delay in coming to the Court. 3. No “The very life of a trade mark depends upon the promptitude with which it is vindicated,” James, L.J., quoted, with approval by Lord Blackburn, in *Johnston*

3. No delay.

Sect. 77. *v. Orr Ewing*, L. R. 7 App. Cas. 230. Hence an interlocutory injunction may be moved for at once. By **Injunction.** sect. 25 of the Judicature Act, 1873, an injunction may be granted by interlocutory order in all cases in which it appears just that such order should be made. The application may, by R. S. C. Order L. rule 6, be made *ex parte* or with notice, and is made by motion. As to the principles on which it is granted, see *Read v. Richardson*, 45 L. J. 54. An interlocutory injunction is not usually granted where there is any considerable conflict as to title, but may be ordered to stand over until trial (*Mitchell v. Henry*, 15 Ch. D. 181. For forms of order, see App. A.

Discovery. The plaintiff may obtain discovery of such particulars as the names of the persons to whom the defendant has sold goods alleged to be marked with the plaintiff's trade mark, or other particulars material to his case, and provided such discovery would not be oppressive to the defendant (*Carver v. Pinto Leite*, L. R. 7 Ch. 90). By Order XXI. rule 1, of the R. S. C. 1883, interrogatories can only be delivered by leave, except where relief is sought on the ground of fraud or breach of trust. It would therefore seem that as the right of action is founded on an intention to deceive (see *Johnston v. Orr Ewing*, quoted above), no leave is required for delivering interrogatories in an action for infringement of a trademark.

In *Orr v. Diaper*, 4 Ch. D. 92, an action for discovery of the persons from whom shippers had obtained goods marked with plaintiff's trade mark was allowed against the shippers.

By sect. 6 of the Merchandise Marks Act, 1862, a demand may be made in writing to a person who has sold goods marked with a spurious mark, for names and addresses of persons who sold him the goods, and if refused, the person is liable to a fine of 5*l*.

Inspection. By R. S. C. 1883, Order L. rule 3, inspection of any property or thing being the subject-matter of the action, or as to which any question may arise therein, may be ordered by the Court or Judge. Notice of the application must be given to the defendant (Order L. rule 6), and the application must be made to a Judge (Order LIV. rule 12), and may be made any time after issue of the writ (Order L. rule 6). In *Hennessy v. Bohmann*, W. N. 1877, p. 14, inspection was ordered by Malins, V.-C., in an *ex parte* application on the ground of emergency.

By sect. 21 of the Merchandise Marks Act, a Court or Judge has power to make an order for inspection of any

manufacture or process carried on by the defendant in **Sect. 77.** which any forged or counterfeit trade mark is alleged to be used, and of every article in possession of defendant alleged to have such forged or counterfeit mark attached to it, and of every instrument capable of making such mark, and of every trade mark alleged to be counterfeit (see App. C.).

A successful plaintiff may elect to have an account of profits instead of damages; he cannot have both (*Neilson v. Betts*, L. R. 5 H. L. 1). Even where the defendant submits, the plaintiff is entitled to an account, though at his peril as to costs. The account will only be allowed as to profits six years before commencement of the action, but will be restricted to such profits as are properly attributable to the use of the plaintiff's trade mark (*Cartier v. Carlile*, 31 Beav. 292). For forms of order, see App. A., and Seton, pp. 234—237.

In an action before a jury, if infringement be proved, the plaintiff will be entitled to nominal damages, even if no special damage be proved (*Blofield v. Payne*, 4 B. & Ad. 410), but if the plaintiff takes an inquiry as to damages, the form of the inquiry will be "what damage, if any," has accrued to him by the unlawful use by the defendant of his trade mark (*Davenport v. Rylands*, L. R. 1 Eq. 302), and on such inquiry special damage must be proved in order to entitle him to damages. The Court will not assume that the amount of goods sold by the defendant under the fraudulent trade mark would have been sold by the plaintiff had the mark not been infringed, and the measure of damages is not therefore the profit the plaintiff might have made by the sale of such goods (*Leather Cloth Co. v. Hirschfield*, L. R. 1 Eq. 299).

The usual defences to an action for infringement of a trade mark are—(1) That the mark is not a trade mark. (1) Not a trademark. The registration of a trade mark does not make that a valid mark which does not possess the essential elements of a trade mark within the meaning of this Act. (2) (2) Not Non-registration in the case of new marks. As to old marks, a certificate of refusal protects the rights of the plaintiff to sue (see sect. 77). (3) That plaintiff is not the registered proprietor, *e.g.*, where plaintiff is assignee or transmittee of the original proprietor, and has omitted to register the assignment or transmission. (4) That plaintiff is not the owner of the business and goodwill concerned in the class or classes of goods for which the

(3) Plaintiff not the registered proprietor.
(4) Plaintiff not owner of goodwill.

- Sect. 77.** mark is registered. (5) Delay on part of the plaintiff in not enforcing his rights. "It is a fraud to allow a plaintiff to avail himself of delay to obtain a benefit for himself," Lord St. Leonard's quoted in *Beard v. Turner*, 13 L. T. N. S. 746; but this will not apply to delay for the purpose of obtaining necessary evidence (*Clegg v. Edmonton*, 8 De G. M. & G. 810). (6) That the mark has become *publici juris*, i.e., has been allowed by the proprietor to become public property (see *Ford v. Foster*, L. R. 7 Ch. 611). (7) Misrepresentation of the plaintiff, such as statements on the tickets or labels in question calculated to deceive (*Leather Cloth Co.'s Case*, 11 H. L. C. 523). The use of the word "patent" on a trade mark where no patent ever existed may disentitle the plaintiff to relief (*Morgan v. McAdam*, 36 L. J. Ch. 228; but see *Marshall v. Ross*, L. R. 8 Eq. 651). As to use of the word where a patent has expired, see *Cheavin v. Walker*, 5 Ch. D. 850. (8) As to license. This may be pleaded, but it will not justify the defendant in so using the mark as to deceive the public by leading them to believe that his goods are the goods of the licensor (*Samuel v. Berger*, 24 Barb. 163).

**CRIMINAL
REMEDY.**

No forgery
of a trade
mark at
common
law.

Imitation
of a trade
mark a
misde-
meanor.

At common law the imitation of a trade mark was held not to be forgery, since forgery must relate to a document or writing (*R. v. John Smith*, 8 Cox, 32), even where it consists in a signature (*R. v. Closs*, 7 Cox, 494). To remedy this state of things, the Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88), was passed, by which the imitation of a mark is made a misdemeanor.

This Act, which Mr. Justice Stephen characterises as being "exceptionally verbose and lengthy," is thus summarised by him in Arts. 364 and 365 of his Digest of Criminal Law, the full text of the Act being set out in App. C.

A trade mark is defined as—

1. A mark lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production, or merchandise, of such person, or to be an article or thing of any peculiar or particular description made or sold by such person.
2. Any mark or sign which, in pursuance of any statute in force for the time being relating to registered designs, is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other

sole right acquired under the provision of such Sect. 77.
statutes or any of them.

Everyone commits a misdemeanor, and is liable upon conviction thereof to a maximum punishment of two years' imprisonment and hard labour, with fine and imprisonment until the fine has been paid, who does any of the following things with intent to defraud, or to enable another to defraud, any person :—

- (a.) Forges or counterfeits any trade mark (sect. 2).
- (b.) Applies any trade mark, or any forged or counterfeited trade mark, to any chattel or article not being the merchandise of any person denoted or intended to be denoted thereby, or not being the merchandise of any person whose trade mark is so forged or counterfeited (sect. 2).
- (c.) Applies any trade mark, or any forged or counterfeited trade mark, to any chattel or article not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged and counterfeited trade mark (sect. 2).
- (d.) Applies any trade mark, or any forged or counterfeited trade mark, to any thing intended for any purpose of trade or manufacture, or in, on, or with which any chattel or article is intended to be sold, or is sold, or offered or exposed for sale (sect. 3).
- (e.) Encloses or places any chattel or article in, upon, under, or with anything to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied (sect. 3).
- (f.) Applies or attaches any chattel or article to any case, cover, reel, ticket, label, or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied (sect. 3).
- (g.) Incloses, places or attaches any chattel or article in, upon, under, with, or to anything having thereon the trade mark of any other person (sect. 3).
- (h.) Causes or procures to be committed any of the above offences, or aids, abets, or counsels the commission of any of them (sects. 2, 3, 13).

Every person committing any such misdemeanor as aforesaid forfeits to Her Majesty—

**Sects.
77, 78.**

- (1.) All chattels and articles to which any such trade mark or counterfeit trade mark is applied, or caused or procured to be applied ;
- (2.) Every instrument for applying any such trade mark or counterfeit trade mark in his possession or power ;
- (3.) The chattels and articles and things mentioned in clauses (*d.*), (*e.*), and (*g.*), and all similar things made to be used in like manner, in his possession or power.

False pretences.

Apart from the above Act, where a person knowingly, by a fraudulent imitation of a trade mark, induces people to buy and pay for articles in the belief they are buying certain things, when in fact they are buying other things, such person may be convicted of obtaining money on false pretences. The offence is committed though the representation is only as to quality (*R. v. Ardley*, 8 Cox, 262), or as to weight (*R. v. Sherwood*, 7 Cox, 270).

*Register of Trade Marks.***Register of trade marks.**

78. There shall be kept at the patent office a book called the Register of Trade Marks, wherein shall be entered the names and addresses (*a*) of proprietors of registered trade marks, notifications of assignments and of transmissions (*β*) of trade marks, and such other matters as may be from time to time prescribed (*γ*).

Name and address.

The name and address of the proprietor will be entered on the register on the registration of the mark (Trade Marks Rules, 30). Application for alteration of address may be made in Form M (Trade Marks Forms), the fee being 5s. for every mark.

Assignments and transmissions.

Where a person becomes entitled to a trade mark by assignment, transmission, or other operation of law, he may apply to be registered as proprietor by sending to the comptroller a request in Form K (Trade Marks Forms). The request is to state particulars of the assignment, or transmission, or other operation of law, so as to show the manner in which the trade mark has

(*a*) Trade Marks Rules, 30, 46.

(*γ*) *Ibid.* 44.

(*β*) *Ibid.* 34—39.

become vested in the applicant, and that it has been assigned or transmitted in connection with the goodwill of the business concerned in the class of goods for which the trade mark was registered. The statements in the request must be verified by statutory declaration (Trade Marks Rules, 34—38). Sects.
78, 79.

The fees payable are 1*l.* for the first mark, and 2*s.* for each additional mark transmitted at the same time (first schedule to Trade Marks Rules). As to the particulars that require to be stated in cases of death, bankruptcy, &c., respectively, see note to sect. 55.

As to the effect of registration, see sects. 76, 77, and 87.

As to rectification of register, see sect. 90.

79. (1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the comptroller shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee (*a*); and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

Removal of
trade mark
after four-
teen years
unless fee
paid.

(2.) If such fee be not paid before the expiration of such fourteen years the comptroller may, after the end of three months from the expiration of such fourteen years remove the mark from the register (*β*), and so from time to time at the expiration of every period of fourteen years.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee (*γ*), the comptroller may, without removing such trade mark

(*a*) 1*l.* (Trade Mark Rules,
First Schedule of Fees.)

(*β*) See Trade Marks Rules, 79.

(*γ*) 10*s.* (Trade Marks Rules,
First Schedule.)

Sect. 79. from the register, accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4.) Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee (a).

(5.) Where a trade mark has been removed from the register for nonpayment of the fee or otherwise, such trade mark shall nevertheless, for the purpose of any application for registration during the five years next after the date of such removal, be deemed to be a trade mark which is already registered.

This section, which is based on Rules 30—33 of the Rules of May, 1876, provides for (1) the duration of the original registration, (2) the continuance of the registration, (3) the removal of a mark from the register, and (4) the restoration of a removed mark.

Duration of original registration.

The original registration will be good for fourteen years and three months, and then, unless a renewal fee has been paid, the mark may be removed from the register. Such removal will deprive the registered proprietor of all rights under sects. 75—77, but by sub-sect. (5) such mark is for the purpose of any application for registration to be deemed to be a registered mark for five years from date of removal. This proviso has special reference to sect. 72, and therefore a mark similar to the removed mark cannot be registered for the same class of goods until such five years have elapsed.

Continuance of the registration.

The registered proprietor may continue the registration by paying before the expiration of every fourteen years the prescribed fee of 1*l.* for each mark. Where any period of fourteen years has elapsed without such payment, the rights of the proprietor will be preserved, if within three months from the expiration of any period of fourteen years he pays an additional fee of 10*s.* for each mark. Due notice will be sent by the comptroller to all proprietors whose trade marks are about to expire.

(a) 1*l.* (See First Schedule to Rules.)

The comptroller may remove the mark if the prescribed fees are not paid within any period of fourteen years and three months, and a record of such removal and the cause thereof will be entered (Trade Marks Rules, 45). Sects. 79—81.

Removal
from the
register.

Restora-
tion to the
register.

If a trade mark has been removed from the register for non-payment of the prescribed fee, sub-sect. (4) gives a discretionary power to the comptroller to restore such mark if he is "satisfied that it is just so to do," and on payment of a further additional fee of 1*l.*, *i.e.*, a total fee of 2*l.* 10*s.* for each mark.

It would seem that an application to restore a mark to the register might be made no matter what time has elapsed since the removal, inasmuch as no limit of time is laid down within which such application must be made. Lapse of time would undoubtedly be one of the elements to be taken into account in determining whether or not it was "just" to restore the mark.

Fees.

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct. Fees for
registra-
tion, &c.

For list of fees prescribed, see first schedule to Trade Marks Rules.

Sheffield Marks.

81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that Company, the following provisions shall have effect:— Registra-
tion by
Cutlers'
Company
of Sheffield
marks.

Sect. 81. In the reign of James I., the cutlers living in Hallamshire, or within six miles distance therefrom, were incorporated under the corporate name of "The Master, Wardens, Searchers, Assistants, and Commonalty of the Company of Cutlers in Hallamshire, in the County of York." The 31 Geo. III. c. 58, restricted the Company to "the arts or trades of makers of knives, sickles, shears, scissors, razors, files, and forks," and provided that apprentices who had served seven years were on attaining the age of twenty-one to have a mark assigned to them.

1801. The 41 Geo. III. c. 97 (Local), made the mark of a freeman assignable by will, and enacted that in default of a will the mark was to descend like personal property, subject to a life estate given to the widow.

1814. The 54 Geo. III. c. 119 (Local), gave to any person carrying on certain specified trades within certain specified limits, though he was not a member of the Company, a right to have on application a mark assigned to him by the Company.

1860. The 23 Vict. c. xliii. (Local), extended the provisions of previous Acts to "the arts or trades of manufacturers of steel, and makers of saws and edge-tools, and other articles of steel, or of steel and iron combined having a cutting edge," and permitted any one exercising any of the trades specified in the Acts within the specified limits to become a freeman of the Company and have a mark assigned.

This section is restricted to "marks or devices assigned or to be assigned" by the Cutlers' Company. The following persons are entitled to have a mark assigned to them :—

1. Apprentices who have served seven years on attaining twenty-one years (31 Geo. III. c. 58, s. 3).
2. Parish apprentices who prove to a Justice that they have served a freeman for seven years (41 Geo. III. c. 97 (Local)).
3. Persons carrying on "the arts or trades of makers of knives, sickles, shears, scissors, razors, files, and forks" (54 Geo. III. c. 119, s. 3); or "the arts or trades of manufacturers of steel, and makers of saws and edge-tools, and other articles of steel, or of steel and iron combined having a cutting edge," within the prescribed limits (23 Vict. c. xliii. s. 1).

- (1.) The Cutlers' Company shall establish and **Sect. 81.**
 keep at Sheffield a new register of trade The
 marks (in this Act called the Sheffield Sheffield
 register) : register.

This new register is to take the place of the old register known as the Cutlers' Register. The marks registered in the latter register are to be transferred to the new register (sub-sect. (2)), and that within five years from the commencement of the Act (sub-sect. (9)), after which time the Cutlers' Register is to be deemed closed, and all marks not transferred to the new register are to be deemed abandoned.

- (2.) The Cutlers' Company shall enter in the Sheffield register, in respect of raw steel and Transfer of
 the goods mentioned in the next subsection, marks
 all Sheffield marks entered before the com- already
 mencement of this Act in respect of cutlery, registered,
 edge-tools, or raw steel, and such goods in and regis-
 the register established under the Trade tration of
 Marks Registration Act, 1875, belonging to marks
 persons carrying on business in Hallam- assigned.
 shire, or within six miles thereof, and shall
 also enter in such register, in respect of the
 same goods, all the trade marks which shall
 have been assigned by the Cutlers' Com-
 pany and actually used before the com-
 mencement of this Act, but which have
 not been entered in the register estab-
 lished under the Trade Marks Registration
 Act, 1875 :

The Sheffield register, like the old register, is restricted to trade marks in respect of raw steel, cutlery, edge-tools, goods made of steel, or of steel and iron combined, whether with or without a cutting edge (sub-sect. (3)), belonging to persons carrying on business in Hallamshire, or within six miles thereof.

This sub-section provides for (1) the transfer to the new register by the Cutlers' Company of all marks on the

Sect. 81. old register, and (2) of the registration in the new register of marks assigned and actually used before the beginning of the Act but not registered.

As to assignment of marks, see note at head of this section.

Applica-
tion for
new marks.

(3.) An application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:

The application is to be governed by the general provisions and rules of the Act (sub-sect. 7). The application is to be in duplicate (Trade Marks Rules, 53), and is to be made in the same way as an application to the comptroller in regard to other marks on Form F (Trade Marks Forms), but addressed as stated in the Instructions. The fees payable are the same as for other marks. See first schedule to Trade Marks Rules.

Every application is to be notified to the comptroller (sub-sect. (4)), who may stop the application, subject to an appeal (sub-sects. (4) and (5)).

As to applications by corporate bodies, see sub-sect. (11).

As to applications by persons not carrying on business within the prescribed limits, see sub-sect. (8).

Notice of
applica-
tion to be
given to
comp-
troller.

(4.) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner (α), and unless the comptroller within the prescribed time (β) gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(α) Trade Marks Rules, 54.

(β) One month from date of

receipt of notice. Trade Marks Rules, 55.

- (5.) If the comptroller gives notice of objection as Sect. 81. aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court.

This section will enable the comptroller to prevent marks being registered in the Sheffield register by persons who do not fulfil the necessary conditions, *e.g.*, who do not carry on business in Hallamshire, or within six miles thereof.

The notice to the comptroller is to be given by the Cutlers' Company within seven days after the receipt by them of the application, by sending to the comptroller a copy of the application and two representations of the mark for each class for which the applicant seeks registration (Trade Marks Rules, 54).

If the comptroller gives notice of objection, he must do so within one month from the date of the receipt of the notice from the Company (Trade Marks Rules, 54). The appeal of the Court as to which no special provision is made by the rules would seem under the general provisions of Trade Marks Rules, 56, to be made by summons under rule 29.

- (6.) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day :

Notice of
registra-
tion to be
given to
comp-
troller.

The object of this section is to enable the comptroller to know what marks are registered. This is essential, inasmuch as these marks are subject to the provisions of the Act as to effect, &c. ; and by sect. 79 the comptroller has to give to the registered proprietor every fourteen years, notice that the mark will be removed unless re-registered.

Sect. 81. The registration is to date not from the date on which the mark was assigned but from the day of application for registration.

Provisions
of this Act
applicable
to Sheffield
marks.

(7.) The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark, shall apply in the case of applications and registration in the Sheffield register; and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life estate, and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:

Trade Marks Rules, 56, is founded on this section.

The definition of a trade mark contained in sect. 64 does not apply to these Sheffield marks. This section deals only with marks after they have been assigned by the Company. As to what marks can be so assigned, see note at head of section.

As to the form of application, see sect. 62; the effect of registration, sects. 75—77; assignment and transmission, sects. 70 and 87.

Life estate
of widow.

By the 41 Geo. III. c. 97 (Local), the widow of a freeman has, during her widowhood or future coverture, a life estate in the freeman's trade marks which she may dispose of. Subject to this estate the trade marks are to pass in the same way as any other personal estate, but by 54 Geo. III. c. 119 (Local), not more than one person of the family shall be entitled to use the mark at the same time.

Applica-
tions from
persons

(8.) Where the comptroller receives from any person not carrying on business in Hallam-

shire, or within six miles thereof, an application for registration of a trade mark used on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company :

Sect. 81.

not carrying on business within the prescribed limits.

The manner in which the comptroller is to notify the application is by sending to the Cutlers' Company a copy of the Official Journal containing the application, with a note distinguishing such application (Trade Marks Rules, 54 (3)).

- (9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned :

Close of Cutlers' register.

This section allows five years as the time within which all marks are to be transferred from the old to the new register under sub-sect. (2).

- (10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks :
- (11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks :
- (12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the

Persons may be registered for two or more marks.

A body corporate may be registered.

Appeal to comptroller.

**Sects.
81, 82.**

prescribed manner, appeal to the comptroller, who shall have power to confirm, reverse, or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court:

For form of appeal to the comptroller, see Trade Marks Forms, W. The fee payable is 1*l*. (see first schedule to Trade Marks Rules).

As to appeal to the Court (see Trade Marks Rules, 29).

Remedy
for counter-
feiting
Sheffield
marks

(13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register.

See App. C. as to the provisions of the Acts here referred to.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

Patent
Office.

82. (1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2.) Until a new patent office is provided, the offices of the Commissioners of Patents for inventions

and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act. **Sects.
82—84.**

(3.) The patent office shall be under the immediate control of an officer, called the comptroller general of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4.) Any act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Board of Trade.

The offices of the Commissioners of Patents, which is now called the Patent Office, is at 25, Southampton Buildings, Chancery Lane, London, W.C. **Patent
Office.**

An office has been provided in Manchester at 48, Royal Exchange, where the register may be searched for all marks in classes 23—25 (Trade Marks Instructions, 38).

83. (1.) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks. **Officers
and clerks.**

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

84. There shall be a seal for the patent office, and impressions thereof shall be judicially noticed and admitted in evidence. **Seal of
patent
office.**

Letters patent are now sealed with the seal of the Patent Office (sect. 12).

Sects. 84—87. Copies of patents, specifications, disclaimers and other documents from the Patent Office, if sealed with the seal of the office and certified by the comptroller, are receivable in evidence without proof or production of the originals (sect. 89).

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust, expressed, implied, or constructive.

Registers kept under the Act.

The registers kept under this Act are :—

1. The register of patents (sect. 23).
2. The register of designs (sect. 55).
3. The register of trade marks (sect. 78).
4. The Sheffield register of trade marks (sect. 81).

Refusal to grant patent, &c. in certain cases.

86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality

Letters patent have always contained a clause that the grant is to be void if it be “contrary to law or prejudicial or inconvenient to our subjects in general.”

Entry of assignments and transmissions in registers.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall, on request (a), and of proof of title to his satisfaction (β), cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade marks, as proprietor of a patent,

(a) For Forms of Request, see Patents Forms, Form L; Designs Forms, Form K; Trade Marks Forms, Form K.

(β) Patents Rules, 65—69; Designs Rules, 22—26; Trade Marks Rules, 34—38.

copyright in a design or trade mark, as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property. Sect. 87.

This section deals with (1) the entry of assignments and transmissions in the register, and (2) the effect of such registration.

As to assignments and transmissions of patents (see note to sect. 23); of designs (see note to sect. 52), and of trade marks (see note to sect. 78).

The provisions of this section in regard to the rights of the registered proprietors to assign, grant licenses as to, and otherwise deal with the patent, copyright, and trade mark subject to the conditions specified, are supplemental to the other rights conferred by the Act on such registered proprietor. See as to patents (the form of patent in first schedule to the Act); as to designs (sects. 58, 60), and as to trade marks (sects. 75—77).

The corresponding provisions of the Patent Law Patents. Amendment Act, 1852, were differently worded. By sect. 35 until an assignment was registered “the grantee or grantees of the letters patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such letters patent, and of all the licenses and privileges thereby given and granted.” Under that section it was held that an unregistered assignee could not maintain an action for infringement of a patent, even though the objection was not taken in the notice of objections (*Chollett v. Hoffman*, 7 Ell. & B. 686). Does the same rule hold under the present section? By this section the registered proprietor has power absolutely to (1) assign; (2) grant licenses as to, and (3) otherwise deal with the patent. An action for infringement is not an “assignment” or a “license”: and the words “otherwise deal with” evidently, from the subsequent words, mean a “dealing” for which a “consideration” may be given, and do not therefore apply to an action

Sects. 87, 88. for infringement. Even under the 35th sect. of the Patent Law Amendment Act, 1852, it was held (in *Hassall v. Wright*, L. R. 10 Eq. 509), that the section did not apply to an action by an unregistered assignee against the assignor and a subsequent unregistered licensee to restrain their using the patent, and that a registration dated back to the date of the assignment.

Designs. In regard to designs, the rights given are statutory rights, and depend altogether on registration. The registered proprietor alone has the rights of user (sect. 50), and of suing for penalties (sect. 58), or damages (sect. 59).

Trade Marks. As to trade marks, sect. 77, which requires a mark to be registered as a condition precedent to an action for infringement (except in case of old marks,) does not expressly say that such registration is to be by the person who is bringing the action for infringement, but inasmuch as the section requires the mark to be registered "in pursuance of this Act," and sect. 78 and rule 34 (Trade Marks Rules, which by sect. 101 are part of the Act,) seem to require that all assignments are to be registered, it would follow that the assignee of a mark requires to be registered in order to maintain an action for infringement.

The rule that a transmittee could assign a mark without being registered (Trade Mark Rules, 1875,) is no longer retained.

Inspection
of and
extracts
from
registers.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed (a); and certified copies (β), sealed with the seal of the patent office, of any entry in such register shall be given to any person requiring the same on payment of the prescribed fee (γ).

This section must be read along with the other sections relating to the right of persons to copies of entries on

(α) Patents Rules, 75 ; Trade Marks Rules, 49 ; Designs Rules, 33.

(β) Patents Rules, 76 ; Designs Rules, 33.

(γ) Office copies (Patents and

Trade Marks), 4*d.* for every 100 words (not less than 1*s.*). Designs according to agreement. Certifying, 1*s.* (See Schedule of Fees.)

the register. By Patents Rules, 75, copies may be obtained of any entry on the register. This is not the case with designs. A copy of a design can only be obtained when the copyright has expired (sect. 52, sub-sect. (2), Designs Rules, 33), but a certificate may be obtained of the existence of the copyright under sect. 53. No provision exists as to copies from Trade Marks Register, except what is contained in this and the following section.

**Sects.
88, 89.**

89. Printed or written copies or extracts, purporting to be certified (a) by the comptroller and sealed with the seal of the patent office, of or from patents, specifications, disclaimers, and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals (β).

Sealed
copies to
be received
in evidence.

This section is based on sect. 4 of the Patent Law Amendment Act, 1852; Rule 41, Trade Marks Registration Acts, 1875—7, and sect. 16 of the Copyright of Designs Act, 1842.

The certified copy or extract must now in all cases be sealed with the seal of the Patent Office, and in the case of certificates, of any entry on the Registers of Designs or Trade Marks the legal proceeding for which the certificate is granted is to be stated (Designs Rules, 57; Trade Marks Rules, 34).

Certificate
to specify
legal pro-
ceedings.

No similar provision is to be found in the Patent Rules.

Certified and sealed copies of all specifications, drawings, and amendments are deposited in the Edinburgh Museum of Science and Art, the Enrolments Office of the Chancery Division in Ireland, and the Rolls Office in the Isle of Man, and certified copies or extracts can be there obtained and will be admitted as evidence in Scotland, Ireland, and the Isle of Man (sect. 100).

(a) Patents Forms, Q; Designs Forms, J; Trade Marks Forms, 8.

Rules, 34; Trade Marks Rules, 57. The fee for certifying is 5s. (See Schedule of Fees to Patents Rules.)

(β) Patents Rules, 76; Designs

Sect. 90. **90.** (1.) The Court may, on the application (a) of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

Rectifica-
tion of
registers
by court.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller (β).

Patents.

Under the Patent Law Amendment Act, 1852, sect. 38, the register of patents could only be rectified by leave of the Master of the Rolls. This jurisdiction was, by the Judicature Act, 1873, sect. 16, sub-sect. 1, transferred to the High Court of Justice (*In re Morgan's Patent*, 24 W. R. 245). This section extends the principle of sect. 5 of the Trade Marks Registration Act, 1875, to all the registers kept under this Act, and enables any one of them to be rectified by order of the Court.

**Trade
marks.**

Though the object of the Trade Marks Act is to protect trade marks in use and intended to be used continuously in this country, a person who is not carrying on any business in this country and whose English agent has registered his trade mark in his own name, may be entitled to have the register rectified under this section as a "person aggrieved" (*In re Riviere's Trade Mark*, *Times*, 7th Feb., 1884).

(a) Probably by motion. No rule has been made on the subject.

(β) Office copy of order is to

be left at office, Patents Rules, 71; Designs Rules, 28; Trade Marks Rules, 44.

This section does not apply to changes necessary owing to devolution of the mark (*Ward & Sturt's Trade Mark*, 44 L. T. 97). Sects. 90, 91.

It is very doubtful if an application for removal of a trade mark from the register on account of the proprietor ceasing to be engaged in the business, could be made under this section similar to that which could have been made under Rules of 1875, Rule 33, as to which see *In re Ralph's Trade Mark*, W. N. 1883, p. 81.

Lapse of five years from registration will not take away power of the Court to remove from register a mark that ought not to have been registered (*In re Palmer's Application*, 21 Ch. D. 47), and if an old mark common to the trade has been registered it may be removed (*In re Hyde & Co.'s Trade Mark*, L. R. 7 Ch. 724). As to marks registered under wrong name, see *In re Rust's Trade Mark*, 44 L. T. 98 (n.).

91. The comptroller may, on request in writing, accompanied by the prescribed fee (a),— Power for
comptroller
to correct
clerical
errors.

(a.) Correct any clerical error in or in connexion with an application for a patent, or for registration of a design or trade mark (β); or

(b.) Correct any clerical error in the name, style, or address (γ) of the registered proprietor of a patent, design, or trade mark.

(c.) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant (δ) accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

Sub-sections (a) and (b) are restricted to the correction of clerical errors. Substantial errors in the specifications of letters patent may be corrected by leave under sect. 18.

(α) 5s. See Schedules of Fees.
(β) For Form of Request, see Patents Forms, P; Designs Forms, M; Trade Marks Forms, Q.

(γ) For Form of Request, see Patents Forms, R; Designs Forms, M; Trade Marks Forms, M.
(δ) For Form of Application, see Trade Marks Forms, O.

Sects. 91, 92. It is very doubtful if this section gives the comptroller power to correct a clerical error in letters patent themselves.

As to substantial alterations of a trade mark, see sect. 92.

Sub-section (c) is taken from the rule of 4 Feb., 1878.

The statutory declaration may in the United Kingdom be taken before any officer authorised to administer an oath for the purpose of any legal proceeding. In other parts of Her Majesty's dominions, it may be taken before any officer authorised there to administer an oath in legal proceedings; whilst out of Her Majesty's dominions it may be taken before a British minister, consul, vice-consul, notary public, judge, or magistrate (Trade Marks Rules, 58).

Alteration
of regis-
tered mark.

92. (1.) The registered proprietor of any registered trade mark may apply to the Court (a) for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act (β), and the Court may refuse or grant leave on such terms as it may think fit.

(2.) Notice (γ) of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

(3.) If the Court grants leave, the comptroller shall, on proof thereof (δ), and on payment of the prescribed fee (ε), cause the register to be altered in conformity with the order of leave.

This section is based on rules 35—37 of the Trade Marks Registration Act, 1875.

No alteration will be allowed that amounts to an alteration in an "essential particular," as to which, see sect. 64.

No rules have as yet been made regulating applications under this section save Trade Marks Rules, 44 (c), which requires a copy of the order of the Court to be left with the comptroller, and rule 48 requiring notice of any application to the Court to be given to the comptroller.

(a) By motion, but no rule on subject. sect. 64.

(β) See sect. 64.

(γ) Fourteen days' notice,

(δ) For Form of Notice, see Trade Marks Forms, N.

(ε) 10s.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

**Sects.
93, 94.**

Falsifica-
tion of
entries in
registers.

This section is based on sect. 37 of the Patent Law Amendment Act, 1852.

Three offences are here mentioned :—

1. Making or causing to be made a false entry in a register kept under the Act knowing the entry to be false.
2. Making or causing to be made a writing falsely purporting to be a copy of an entry in any such register knowing the writing to be false.
3. Producing, tendering, or causing to be produced or tendered in evidence any such writing knowing the writing to be false.

See sect. 89 as to receiving copies from register in evidence.

Such offence is made a misdemeanor, and will therefore be punishable with fine and imprisonment at the discretion of the judge (see Stephens' Digest of Criminal Law, p. 14).

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time (α) by the applicant) giving the applicant an opportunity of being heard personally or by his agent (β).

Exercise of
discretion-
ary power
by comp-
troller.

This section secures to the applicant the right to be heard before the comptroller in applications for patents

(α) Five days from the date that the notice of comptroller would be delivered by post (Patent Rules, 12; Designs Rules, 14; Trade Marks Rules, 18).

(β) Comptroller gives fourteen days' notice (Patents Rules, 11; Designs Rules, 13; Trade Marks Rules, 17).

Sects. (see sects. 7, 9, and 17); amendment of specifications
94—96. (sect. 18); registration of designs (sect. 47), and trade marks (sect. 62).

The comptroller is required to give ten days' notice before he exercises his power adversely to the applicant. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant is to notify to the comptroller whether or not he intends to be heard upon the matter. For form of such notice in case of patents, see Patents Forms, E. The decision of the comptroller is to be notified to the applicant. See Patents Rules, 11—13, Designs Rules, 13—15, Trade Marks Rules, 17, 19.

Power of
comptroller
to take
directions
of law
officers.

95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

The law officers are the attorney-general and solicitor-general for England (sect. 117).

Certificate
of comp-
troller to
be evi-
dence.

96. A certificate (a) purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Patents.

Several kinds of certificates are referred to in the Act. In regard to patents, there is (1) the certificate of renewal (Patents Rules, 42, Forms, J.); and (2) a certificate under this section (Patent Forms, Q.). Where such certificate is given, the purposes for which the certificate is to be used will probably require to be stated as in the case of trade marks (see *infra*).

Designs.

As to designs, there is (1) the certificate of registration, sect. 49 (Designs Forms, G.); and (2) a certificate under this section (Designs Rules, 34; Forms, J.).

The purposes for which the certificate is required must be stated in the application (Designs Rules, 34).

(a) Fee for such certificate is 5s. See First Schedule to Rules.

In relation to trade marks the comptroller's certificate is of four kinds, viz. :—

Sects.
96, 97.

1. For use in legal proceedings. (For application form, see Trade Marks Forms, R.).
2. For use in applying for registration in foreign countries. (For application form, see Trade Marks Forms, S.).
3. Of any application made, and of proceedings thereon. (For application form, see Trade Marks Forms, T.).
4. Of refusal to register an old mark. (For application form, see Trade Marks Forms, L.).

Trade
marks.

The person applying is to state for what purposes he requires the certificate. Two unmounted copies of each mark for which the certificate is required are to accompany the form of application. In the case of cotton marks and coloured marks the two unmounted copies of the mark must agree *in every respect* with the representations that formed part of the application for registration (Trade Marks Instructions, 39—41).

97. (1.) Any application, notice, or other document authorised or required to be left, made, or given at the patent office or to the comptroller; or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

Applica-
tions and
notices by
post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

This section also forms rule 19 of the Patents Rules, rule 12 of the Designs Rules, and rule 16 of the Trade Marks Rules.

By sect. 13, every patent is to be sealed as of the day of application. Where the application is made by letter, it is by this section to be taken as made at the time when the letter would be delivered in the ordinary course of post, even though it is never actually received. All applicants who send any application, notice, or other document, by post ought to keep exact particulars to show that the

Sects. letter was properly addressed and duly posted. This will
97—99. best be done by retaining a copy of the address, the name
 of the person who posted the letter, and the place where
 posted. The person employed to post the letter should
 also be required to make a note of the same particulars.

Provision
 as to days
 for leaving
 documents
 at office.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

On the days above mentioned, the Patent Office is closed (Patents Rules, 7).

The days now observed as holidays at the Bank of England are Easter Monday, Whit Monday, first Monday in August, and December 26th.

Declaration
 by infant,
 lunatic,
 &c.

99. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as

effectual as if done by the person for whom he is substituted.

**Sects.
99, 100.**

This section formed rule 67 of the rules under the Trade Marks Registration Act, 1875.

By rule 77 of the Patents Rules, rule 29 of Designs Rules, and rule 50 of Trade Marks Rules, where any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced or left at the Patent Office, and it is shown to the satisfaction of the comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

100. Copies of all specifications, drawings, and amendments left at the patent office after the commencement of this Act, printed for and sealed with the seal of the patent office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the patent office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee (a) and any such copy or extract shall be admitted in evidence in all Courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

Transmis-
sion of
certified
printed
copies of
specifica-
tions, &c.

(a) For office copies, 4d. for every 130 words, but never less than 1s. For certifying, 1s.

Sects. This section only relates to patents. The copy or extract of the sealed copies granted under this section does not require to be sealed.

100, 101.

Power for Board of Trade to make general rules for classifying goods and regulating business of Patent Office.

101. (1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act :—

(a.) For regulating the practice of registration under this Act :

(b.) For classifying goods for the purposes of designs and trade marks :

(c.) For making or requiring duplicates of specifications, amendment, drawings, and other documents.

(d.) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendments, and other documents :

(e.) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the patent office ; and providing for the inspection of indexes and abridgments and other documents :

(f.) For regulating (with the approval of the Treasury) the presentation of copies of patent office publications to patentees and to public authorities, bodies, and institutions at home and abroad :

(g.) Generally for regulating the business of the patent office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2.) Any of the forms in the first schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed. **Sects. 101, 102.**

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule, or to the making of any new rules or rule.

Rules have been issued under this section in regard to patents, designs, and trade marks, and some of the forms contained in the schedule to the Act have been altered.

102. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act. **Annual reports of comptroller.**

Sect.103.*International Arrangements.*

Inter-
national
arrange-
ments for
protection
of inven-
tions, de-
signs, and
trade
marks.

103. If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark :

(3.) The application for the grant of a patent, or

the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act.

Sects. ·
103—
105.

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

Provision
for colonies
and India.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

Offences.

105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold, by him as registered which is not so, shall be liable

Penalty on
falsely
represent-
ing articles
to be
patented.

Sects. 105, 106. for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented, or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article.

The question has been raised whether this section applies where there has been a patent, or registered design, or trade mark, and the patent or registration has expired.

The wording of the section is in favour of an affirmative answer. A somewhat similar point was discussed in *Cheavin v. Walker*, 5 Ch. D. 850, viz., whether the use of the word "patent" in an alleged trade mark after the patent had expired was a misrepresentation, and the Court of Appeal held that the words "By Her Majesty's Royal Letters Patent," amounted, along with the Royal arms, to a representation that the patent was an existing one. A similar view was taken by Wood, V.-C., in *Morgan v. McAdam*, 36 L. J. Ch. 228, who said: "Of course it would be better, and those who are inclined to act with scrupulous honesty would take care to put the date of their patent, which would obviate all difficulty, upon the articles which they designate as patented." As to where the marks are put on during the existence of a patent and when the representation is true, see *The Leather Cloth Company's Case*, 11 H. L. C. 523.

As to proceedings by summary conviction in Scotland, see sect. 108; and in Ireland, sect. 117.

Penalty
on un-
authorised
assumption
of Royal
arms.

106. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connexion with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a

manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession, by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Sects.
106—
108.

The mere use of the Royal arms is not an offence under this section. In order to amount to an offence, the use must be calculated to lead persons to believe that the person using them is carrying on his business under the authority of Her Majesty, or the Royal Family, or some Government department.

As to summary convictions in Scotland, see sect. 108 ; and in Ireland, sect. 117.

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the Court shall otherwise direct, but otherwise nothing in this Act shall affect the jurisdiction and forms of process of Courts in Scotland in such an action, or in any action or proceeding respecting a patent hitherto competent to those Courts.

Saving for
Courts in
Scotland.

For the purposes of this section “ Court of Appeal ” shall mean any Court to which such action is appealed.

In Scotland an action for infringement usually takes the form of an action of suspension and interdict, or of an action for damages. See Mackay’s Court of Session Practice, I. p. 372, II. p. 210 ; and Bell’s Commentaries, I. p. 120.

108. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

Summary
proceed-
ings in
Scotland.

As to the offences under this Act punishable by summary conviction, see sects. 105, 106.

**Sects.
109—111.**

Proceed-
ings for
revocation
of patent
in Scot-
land.

109. (1.) Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

(2.) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

As to procedure in an action of reduction, see Mackay's Court of Session Practice, II. p. 120; and as to concurrence of Lord Advocate, see *ibid.*, p. 164.

As to the definition of "Court" in Scotland, see sect. 111.

Reserva-
tion of
remedies
in Ireland.

110. All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only.

Proceedings may, under this section, be taken in Ireland for acts of infringement there committed.

For definition of "Court" in Ireland, see next section.

General
saving for
jurisdic-
tion of
courts.

111. (1.) The provisions of this Act, conferring a special jurisdiction on the Court as defined by this Act (a), shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of

(a) See sect. 117.

Justice in Ireland and Her Majesty's Court of Appeal in Ireland. Sects.
111, 112.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a Court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly (a).

This section reserves to the Courts in Scotland and Ireland their jurisdiction in proceedings relating to patents, designs, and trade marks.

112. This Act shall extend to the Isle of Man, Isle of
Man.
and—

- (1.) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man, in proceedings for infringement, or in any action or proceeding respecting a patent, design, or trade mark competent to those Courts ;
- (2.) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the Court ;
- (3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

(See Patents Rules, 71 ; Trade Marks Rules, 44 ; Designs Rules, 24.

Sects.
113, 114.

Repeal ; Transitional Provisions ; Savings,

Repeal and
saving for
past opera-
tion of
repealed
enact-
ments, &c.

113. The enactments described in the third schedule to this Act are hereby repealed. But this repeal of enactments shall not—

- (a.) Affect the past operation of any of those enactments, or any patent or copyright, or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or ordêr or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act ; or
- (b.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed ; or
- (c.) Take away or abridge any protection or benefit in relation to any such action or proceeding.

See also sect. 45, as to provisions regarding existing patents and applications pending at the commencement of the Act.

Former
registers to
be deemed
continued.

114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act.

(2.) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed, altered, or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal, alteration, or amendment shall take effect before the commencement of this Act ; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

**Sects.
115—117.**

*Saving for
existing
rules.*

All general rules made under the Patent Law Amendments Acts, the Copyrights of Designs Acts, and the Trade Marks Registration Acts, 1875, and in force on the 31st December, 1883, have been repealed, without prejudice to any proceeding which may have been taken under such rules. See Patents Rules, 78 ; Designs Rules, 37 ; Trade Marks Rules, 60.

116. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

*Saving for
preroga-
tive.*

General Definitions.

117. (1.) In and for the purposes of this Act, unless the context otherwise requires,—

**General
definitions.**

“ Person ” includes a body corporate :

“ The Court ” means (subject to the provisions for Scotland (a), Ireland (a), and the Isle of Man (β)) Her Majesty’s High Court of Justice in England :

“ Law officer ” means Her Majesty’s Attorney-General or Solicitor-General for England :

(a) See sect. 111.

(β) See sect. 112.

Sect. 117. “The Treasury” means the Commissioners of Her Majesty’s Treasury :

“Comptroller” means the Comptroller-General of Patents, Designs, and Trade Marks :

“Prescribed” means prescribed by any of the schedules to this Act, or by general rules under or within the meaning of this Act :

“British possession” (a) means any territory or place situate within Her Majesty’s dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act :

“Legislature” includes any person or persons who exercise legislative authority in the British possession ; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, “summary conviction” (β) means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

(a) See sect. 104.

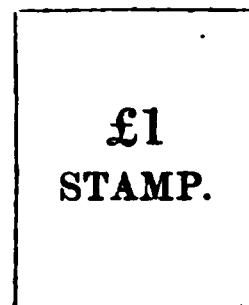
(β) See sects. 105, 106.

SCHEDULES.



THE FIRST SCHEDULE.

FORMS OF APPLICATION, &c.

FORM A ⁽¹⁾.*Form of Application for Patent.*

I, (a) *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do solemnly and sincerely declare that I am in possession of an invention for (b) "*Improvements in Sewing Machines*;" that I am the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

(a) Here insert name, address, and calling of inventor.

(b) Here insert title of invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(c) *John Smith.*

(c) Signature of inventor.

Declared at *Birmingham*, in the county of *Warwick*,
this day of 18 .

Before me,

(d) *James Adams,*

Justice of the Peace.

(d) Signature and title of the officer before whom the declaration is made.

⁽¹⁾ Forms A., A¹., in Schedule to Patents Rules, have been substituted for this Form. See Patents Rules, 5.

FORM B ⁽¹⁾.*Form of Provisional Specification.*

(a) Here insert title as in declaration.

(b) Here insert name, address, and calling of inventor as in declaration.

(c) Here insert short description of invention.

Improvements in Sewing Machines. (a)

I, (b) *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," to be as follows (c):—

* * * * *

Having now described the nature of my said invention, I declare that what I claim is (d).

(d) Here state distinctly the features of novelty claimed.

1.

2.

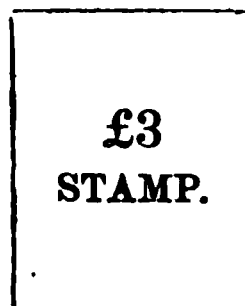
3. &c.

(e) Signature of inventor.

(e) *John Smith.*

Dated this day of 18 .

⁽¹⁾ Form B., in Schedule to Patents Rules has been substituted for this Form. See Patents Rules, 5.

FORM C ⁽¹⁾.*Form of Complete Specification.**Improvements in Sewing Machines.* (a)

I, (b) *John Smith*, of 29, *Perry Street*, *Birmingham*, in the county of *Warwick*, *Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (c) :—

(a) Here insert title, as in declaration.

(b) Here insert name, address, and calling of inventor, as in declaration.

(c) Here insert full description of invention.

* * * * *

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is (d).

(d) Here state distinctly the features of novelty claimed.

1.

2.

3. &c.

(e) *John Smith.*

(e) Signature of inventor.

. Dated this day of 18 .

⁽¹⁾ Form C, in Schedule to Patents Rules has been substituted for this Form. See Patents Rules, 5.

FORM D.

Form of Patent.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To all to whom these presents shall come greeting :

Whereas *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief :

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (herein-after together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention :

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention :

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request :

Know ye, therefore, that We, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial licence, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of *four-*

teen years from the date hereunder written of these presents : And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for us, our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of *fourteen years* either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent licence or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned : Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything herein-before contained : Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided ; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon

SCHEDULES TO ACT.

such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything herein-before contained : Provided also that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted : And lastly, we do by these presents for us, our heirs and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this one thousand eight hundred
and and to be sealed as of the one
thousand eight hundred and .



FORM E (¹).

Form of Application for Registration of Design.

day of 18 .

You are hereby requested to register the accompanying Design, in Class ,

in the name of (a) , of

who claims to be the Proprietor thereof, and to return the same to .

(a) Here insert legibly the name and address of the individual or firm.

Statement of nature of Design

Registration Fees enclosed £ s.

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, W.C.

(Signed)

(¹) Form E., in Schedule to Designs Rules has been substituted for this Form. See Designs Rules, 4.

FORM F ⁽¹⁾.*Form of Application for Registration of Trade Mark.*

(One representation to be fixed within this square, and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade mark, [*In Class — Iron in bars, sheets, and plates ; in Class — Steam engines and boilers ; and in Class — Warming Apparatus*], in the name of (a) who claims to be the proprietor thereof.

(a) Here insert legibly the name, address, and business of the individual or firm.

Registration Fees enclosed £ s.

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, W.C.

(Signed)

Note.—If the trade mark has been in use before August 13, 1875, state length of user.

⁽¹⁾ Form F., in Schedule to Trade Marks Rules, has been substituted for this Form. See Trade Marks Rules, 4.

THE SECOND SCHEDULE.

Fees on instruments for obtaining Patents, and Renewal.

(a.) Up to sealing.

	£	s.	d.	£	s.	d.
On application for provisional protection	1	0	0			
On filing complete specification	3	0	0			
	<hr/>			4	0	0
				<hr/>		
<i>or</i>						
On filing complete specification with first application				4	0	0

(b.) Further before end of four years from date of patent.

On certificate of renewal	50	0	0
	<hr/>		

(c.) Further before end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.

On certificate of renewal	100	0	0
	<hr/>		

Or in lieu of the fees of £50 and £100 the following annual fees : —

Before the expiration of the						
fourth year from the date of the patent				10	0	0
fifth	„	„		10	0	0
sixth	„	„		10	0	0
seventh	„	„		10	0	0
eighth	„	„		15	0	0
ninth	„	„		15	0	0
tenth	„	„		20	0	0
eleventh	„	„		20	0	0
twelfth	„	„		20	0	0
thirteenth	„	„		20	0	0

THE THIRD SCHEDULE

Enactments repealed.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part ; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. IV. c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part ; namely,— Section eleven.
5 & 6 Will. IV. c. 83. [1835.]	An Act to amend the law touch- ing letters patent for inven- tions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled “An Act to amend the law touching letters patent for inventions.”
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copy- right of designs for ornament- ing articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relat- ing to the copyright of designs.
7 & 8 Vict. c. 69. (a) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled, “An Act for the better administration of justice in His Majesty’s Privy Council, and to extend its jurisdiction and powers.” In part ; namely,— Sections two to five, both included.

(a) *Note.*—Sections 6 and 7 of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specification.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of Her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.

28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part ; namely,— Section sixty-five, and in the Schedule the words and figures. “Certificate of the registration of a design, £5 ; and see section 65.”
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part ; namely,— Section five.
45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part ; namely,— Section sixteen.

R U L E S

RELATING TO APPLICATIONS FOR

**PATENTS FOR INVENTIONS AND PROCEEDINGS
THEREON, AND REGISTRATION OF PATENTS;**

WITH

LIST OF FEES,

AND

RULES FOR APPEALS TO THE LAW OFFICERS.

By virtue of the provisions of the Patents Designs and Trade Marks Act, 1883, the Board of Trade do hereby make the following Rules :—

The section of the Act authorizing the Board of Trade to make rules is S. 101.

SHORT TITLE.

1. These Rules may be cited as the Patents Rules, Short title. 1883.

COMMENCEMENT.

2. These Rules shall come into operation from and Commence- immediately after the 31st day of December 1883. ment.

This is the same date as the date of commencement of the Act. See S. 3.

INTERPRETATION.

3. In the construction of these Rules, any words here- Interpretation- in used defined by the said Act shall have the meanings tion. thereby assigned to them respectively.

The general definitions of the Act will be found in S. 117.

FEES.

Fees. 4. The fees to be paid under the above-mentioned Act, in addition to the fees mentioned in the Second Schedule thereto, so far as it relates to patents, shall be those specified in the list of fees in the First Schedule to these Rules.

For form for certificate of payment or renewal, see Patent Forms, J.

FORMS.

Forms. Alterations. 5. The Forms A, B, and C in the First Schedule to the said Act shall be altered or amended by the substitution therefor respectively of the Forms A, A1, B, and C in the Second Schedule hereto.

Forms A, A1, relate to applications, B to provisional specifications, and C to complete specifications.

Application. 6. (1.) An application for a patent shall be made either in the Form A or the Form A1 set forth in the Second Schedule hereto, as the case may be.

Form A1 is adapted to communicated inventions.

Specification. (2.) The Form B in such Schedule of provisional specification and the Form C of complete specification shall respectively be used.

Other forms. (3.) The remaining forms set forth in such Schedule may, as far as they are applicable, be used in any proceedings under these rules.

Hours of business. 7. The Patent Office (a) shall be open to the public every week-day during the hours of ten and (b) four, except on the days and times following :—

Christmas Day.

Good Friday.

The day observed as her Majesty's birthday.

The days observed as days of public fast or thanksgiving, or as holidays (c) at the Bank of England.

(a) The Patent Office is at 25, Southampton Buildings, Chancery Lane, London, W.C.

(b) "and" is a misprint for "to."

(c) As to Bank-holidays at present, see S. 98.

8. An application for a patent must be signed by the Agency applicant, but all other communications between the applicant and the Comptroller and all attendances by the applicant upon the Comptroller may be made by or through an agent duly authorised to the satisfaction of the Comptroller, and if he so require resident in the United Kingdom.

The application is in the form of a declaration, which can only be made by the applicant himself. See S. 5, sub-s. (2).

9. The application (a) shall be accompanied by a state-
ment of an address to which all notices, requisitions, and
communications of every kind may be made by the Comp-
troller or by the Board of Trade, and such statement shall
thereafter be binding upon the applicant unless and until
a substituted statement of address (b) shall be furnished
by him to the comptroller. He may in any particular
case require that the address mentioned in this rule be in
the United Kingdom.

Statement
of address.

(a) For Form of Application see Patent Forms, A and A1.

(b) The fee for altering address is 5s. See First Schedule to these Rules.

10. All documents and copies of documents sent to or
left at the Patent Office or otherwise furnished to the
Comptroller or to the Board of Trade shall be written or
printed in large and legible characters in the English
language upon strong wide ruled paper (on one side only),
of a size of 13 inches by 8 inches, leaving a margin of two
inches on the left-hand part thereof, and the signature of
the applicants or agents thereto must be written in a
large and legible hand. Duplicate documents shall at any
time be left, if required by the Comptroller.

Size, &c.,
of docu-
ments.

11. Before exercising any discretionary power (a) given
to the Comptroller by the said Act adversely to the appli-
cant (b) for a patent or for amendment of a specification,
the Comptroller shall give ten days' notice, or such longer
notice as he may think fit, to the applicant of the time
when he may be heard personally or by his agent before
the Comptroller.

Exercise of
discretion-
ary power
by Comp-
troller.

Notice of
hearing.

(a) See S. 94.

(b) For definition of applicant, see Rule 15.

Notice by
applicant.

12. Within five days from the date when such notice would be delivered in the ordinary course of post (*a*), or such longer time as the Comptroller may appoint in such notice, the applicant (*b*) shall notify to the Comptroller whether or not he intends to be heard upon the matter (*c*).

(*a*) If applicant does not receive notice, he will be made aware of it on receiving notice under Rule 14.

(*b*) For definition of applicant see Rule 15.

(*c*) For Form of Notice see Patents Forms, E.

Comp-
troller
may re-
quire state-
ment, &c.

13. Whether the applicant (*a*) desires to be heard or not the Comptroller may at any time require him to submit a statement in writing within a time to be notified by the Comptroller, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require.

(*a*) See Rule 15.

Decision to
be notified
to parties.

14. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified by him to the applicant (*a*), and any other person affected thereby (*b*).

(*a*) See Rule 15.

(*b*) *E.g.*, to another applicant for the same invention.

Definition
of "appli-
cant."

15. The term "applicant" in Rules 11, 12, and 13 shall include an applicant whose specification bears a title the same as or similar to that of the specification of a prior applicant, and has been reported on (*a*) by the examiner.

(*a*) See S. 7.

Prior and
second
applicant
may attend
hearing.

16. Such prior and second applicant respectively may attend the hearing of the question whether the invention comprised in both applications is the same, but neither party shall be at liberty to inspect the specification of the other.

As to the rights of prior and subsequent applicants see S. 7, Suba. (5).

Industrial
or Inter-

17. Any person desirous of exhibiting an invention at an industrial or international exhibition, or of publishing

any description of the invention during the period of the holding of the exhibition, or of using the invention for the purpose of the exhibition in the place where the exhibition is held shall, after having obtained from the Board of Trade a certificate (a), that the exhibition is an industrial or international one, give to the Comptroller seven days' notice (b) of his intention to exhibit, publish, or use the invention, as the case may be.

For the purpose of identifying the invention in the event of an application for a patent being subsequently made, the applicant shall furnish to the Comptroller a brief description of his invention accompanied, if necessary, by drawings, and such other information as the Comptroller may in each case require.

(a) See S. 57.

(b) For Form of Notice see Patent Forms, O.

18. Any document for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure, which in the opinion of the Comptroller may be obviated without detriment to the interests of any person, may be corrected, if and on such terms as the Comptroller may think fit.

It is doubtful if this Rule would authorize an amendment of Letters Patent themselves. See notes to SS. 18, 91.

19. Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office or to the Comptroller or to any other person under these Rules may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

This Rule forms S. 97 of the Act.

Affidavits. 20. Affidavits may, except where otherwise prescribed by these Rules, be used as evidence in any proceedings thereunder when sworn to in any of the following ways, viz. :—

- (1.) In the United Kingdom before any person authorized to administer oaths in the Supreme Court of Judicature or before a justice of the peace for the county or place where it is sworn or made.
- (2.) In any place in the British dominions out of the United Kingdom before any court, judge, or justice of the peace or any person authorised to administer oaths there in any court (a).
- (3.) In any place out of the British dominions before a British minister, or person exercising the functions of a British minister, or a British consul, vice-consul, or other person exercising the functions of a British consul, or a notary public, or before a judge or magistrate.

(a) See Instructions, 6. It may also be taken before a notary, L. T., Feb. 9th, 1884.

**Statutory
declara-
tions.**

21. Where any statutory declaration prescribed by these Rules, or used in any proceedings thereunder, is made out of the United Kingdom, the words, “and by virtue of the Statutory Declarations Act, 1835,” must be omitted, and the declaration shall (unless the context otherwise requires) be made in the manner prescribed in Rule 20, sub-section (3).

See also note to Patent Forms, A, A1.

APPLICATION WITH PROVISIONAL OR COMPLETE SPECIFICATION.

**Order of
recording
applica-
tions.**

22. Applications for a patent sent by prepaid letter through the post shall, as far as may be practicable, be opened and numbered in the order in which the letters containing the same have been respectively delivered in the ordinary course of post.

Applications left at the Patent Office otherwise than through the post shall be in like manner numbered in the order of their receipt at the Patent Office.

This Rule seems to be intended to regulate the business at the Patent Office, and not to determine any question of priority between applications made on the same day. The Act does not recognise fractions of a day, and Letters Patent are to be sealed as of the day of application, S. 13. The fact that an application is opened and numbered before another for the same invention (both having been lodged on the same day) will not give it any priority so as to bring the second application under the provisions of S. 7, Subs. (5), (6).

23. Where a person making application for a patent includes therein by mistake, inadvertence, or otherwise, more than one invention, he may, after the refusal (a) of the Comptroller to accept such application, amend the same so as to apply to one invention only, and may make application for separate patents for each such invention accordingly. Application for separate patents by way of amendment.

Every such application shall bear the date of the first application, and shall, together therewith, be proceeded with in the manner prescribed by the said Act and by these Rules as if every such application had been originally made on that date for one invention only (b).

(a) See S. 7.

(b) Separate fees will be payable on each invention.

24. An application for a patent by the legal representative of a person who has died possessed of an invention shall be accompanied by an official copy of or extract from his will or the letters of administration granted of his estate and effects in proof of the applicant's title as such legal representative. Application by representative of deceased inventor.

For the rights of the legal personal representative see S. 12, Subs. (3) (b).

25. On the acceptance of an application with a provisional or complete specification the Comptroller shall give notice thereof to the applicant, and shall advertise such acceptance in the official journal of the Patent Office. Notice and advertisement of acceptance.

The acceptance of the application will give provisional protection (S. 14), in case of acceptance of the complete specification it will give protection by complete specification (S. 15).

Inspection
on accept-
ance of
complete
specifica-
tion.

26. Upon the publication of such advertisement of acceptance in the case of an application with a complete specification (a) the application and specification or specifications with the drawings (if any) may be inspected at the Patent Office upon payment of the prescribed fee (b).

(a) See S. 10.

(b) 1s.

APPLICATION ON COMMUNICATION FROM ABROAD.

Communi-
cation from
abroad.

27. An application for a patent for an invention communicated from abroad shall be made in the form A 1 set forth in the Second Schedule hereto.

The person to whom the invention is communicated is the applicant within the meaning of the Act.

SIZES AND METHODS OF PREPARING DRAWINGS ACCOMPANYING PROVISIONAL OR COMPLETE SPECIFICATIONS.

Size of
drawings.

28. The drawings (a) accompanying provisional or complete specifications shall be made upon half-sheets or sheets of imperial drawing paper, to be within a border line of 19 inches by 12 inches, or 27 inches by 19 inches, with a margin of $\frac{1}{2}$ an inch all round.

(a) See also Rule 31.

Copies of
drawings.

29. A copy of the drawings will be required upon *rolled* imperial drawing paper or upon thin Bristol board of the same dimensions as the original drawing or drawings. All the lines must be absolutely black, Indian ink of the best quality to be used, and the same strength or colour of the ink maintained throughout the drawing. Any shading must be in lines clearly and distinctly drawn and as open as is consistent with the required effect. Section lines should not be too closely drawn. No colour must be used for any purpose upon the copy of the drawings. All letters and figures of reference must be bold and distinct. The border line should be one fine line only. The drawings must not be folded, but must be delivered at the Patent Office either in a perfectly flat

state or rolled upon a roller so as to be free from creases or breaks.*

30. Where a complete specification is left at the Patent Office after a provisional specification has been accepted the complete specification and drawing or drawings accompanying the same, as well as the copy thereof, must be prepared in accordance with Rules 10, 28, and 29.

As to the relation of drawings to the specification see note to S. 5.

ILLUSTRATED JOURNAL.

31. Every applicant for the grant of a patent shall, in addition to the drawings to be furnished with his complete specification, furnish the Comptroller with a drawing illustrative of the feature or features of novelty constituting his invention. Such drawing must be prepared in the manner prescribed for the copy of the original drawing or drawings accompanying the specification, but must not cover a space exceeding 16 square inches. The drawing must be accompanied by a concise explanatory statement on foolscap paper and legibly written or printed.

Additional drawing to be furnished.

S. 40 gives the Comptroller power to publish an illustrated journal.

OPPOSITION TO GRANTS OF PATENTS.

32. A notice of opposition to the grant of a patent shall state the ground or grounds on which the person giving such notice (herein-after called the opponent) intends to oppose the grant, and shall be signed by him. Such notice shall state his address for service in the United Kingdom.

Notice of opposition.

For Form of Notice see Patents Forms, D.

The fee payable by opponent is 10s. See First Schedule.

33. On receipt of such notice a copy thereof shall be furnished by the Comptroller to the applicant.

Copy for applicant.

See also S. 11, Subs. (2).

* As the drawings accompanying the provisional and complete specification respectively are copied at the Patent Office for publication by the process of photo-lithography, this rule must be strictly observed in order that correct copies may be made.

Particulars
of prior
patent.

34. Where the ground or one of the grounds of opposition is that the invention has been patented in this country on an application of prior date, the title, number and date of the patent granted in such prior application shall be specified in the notice.

For grounds of opposition see S. 11.

Opponent's
evidence.

35. Within 14 days after the expiration of two months from the date of the advertisement of the acceptance of a complete specification, the opponent shall leave at the Patent Office statutory declarations (a) in support of his opposition, and deliver to the applicant a list thereof.

(a) See Rule 20.

Applicant's
evidence.

36. Within 14 days from the delivery of such list the applicant shall leave at the Patent Office statutory declarations (a) in answer, and deliver to the opponent a list thereof, and within seven days from such delivery the opponent shall leave at the Patent Office his statutory declarations (a) in reply, and deliver to the applicant a list thereof. Such last-mentioned declarations shall be confined to matters strictly in reply.

Evidence
in reply.

Copies of the declarations mentioned in this and the last preceding Rule may be obtained either from the Patent Office or from the opposite party.

(a) See Rule 20.

Closing of
evidence.

37. No further evidence shall be left on either side except by leave of the Comptroller upon the written consent of the parties duly notified to him, or by special leave of the Comptroller on application made to him for that purpose.

38. Either party making such application shall give notice thereof to the opposite party, who shall be entitled to oppose the application.

Notice of
hearing.

39. On the completion of the evidence the Comptroller shall appoint a time for the hearing of the case, and shall give to the parties seven days' notice at least of such appointment.

40. On the hearing of the case no opposition shall be allowed in respect of any ground not stated in the notice of opposition, and where the ground or one of the grounds is that the invention has been patented in this country on an application of prior date, the opposition shall not be allowed upon such ground unless the title, number, and date of the patent granted on such prior application shall have been duly specified in the notice of opposition.

Disallow-
ance of
opposition
in certain
cases.

For grounds of opposition see S. 11.

41. The decision of the Comptroller in the case shall be notified by him to the parties.

Decision to
be notified
to parties.

Either party may appeal to law officer. See S. 11, Subs. (2).

CERTIFICATES OF PAYMENT OR RENEWAL.

42. If a patentee intends at the expiration of the fourth or eighth year from the date of his patent to make the prescribed payment (a) for keeping the same in force, he shall seven days at least before such expiration give notice (b) to the Comptroller of such intention, and shall, before the expiration of such fourth or eighth year, as the case may be, leave at the Patent Office a form of certificate of payment (c), duly stamped, subject as herein-after provided, with the prescribed fee of 50*l.* or 100*l.* as the case may be.

Payment of
fees of 50*l.*
and 100*l.*
for con-
tinuance of
patent.

(a) 50*l.* and 100*l.*

(b) Patents Forms, J.

(c) For Form see Patents Forms, J.

43. In the case of patents granted before the commencement of the said Act, the above Rule shall be read as if the words "seventh year" were therein written instead of the words "eighth year."

As to
patents
granted be-
fore com-
mencement
of Act.

See the Second Schedule to the Act.

44. If the patentee intends to pay annual fees (a) in lieu of the above-mentioned fees of 50*l.* and 100*l.*, he shall seven days at least before the expiration of the fourth and each succeeding year during the term of the

Payment of
annual fees
in lieu of
50*l.* and
100*l.*

patent, until and inclusive of the 13th year thereof, give notice to the Comptroller of such intention, and shall, before the expiration of such respective periods as aforesaid, leave at the Patent Office a form of certificate of payment, duly stamped with the fee prescribed to be paid at such periods respectively.

(a) For list of fees payable see First Schedule to these Rules.

Certificate of payment. 45. On due compliance with these Rules, and as soon as may be after such respective periods as aforesaid, or any enlargement thereof respectively duly granted, the Comptroller shall give to the patentee a certificate that the prescribed payment has been duly made.

For Form of Certificate see Patents Forms, J.

A record of the amount and time of payment will be entered on the Register. Rule 72.

ENLARGEMENT OF TIME.

Enlargement of time for payments 46. An application for an enlargement of the time for making a prescribed payment shall state in detail the circumstances in which the patentee by accident, mistake or inadvertence has failed to make such payment, and the Comptroller may require the patentee to substantiate by such proof as he may think necessary the allegations contained in the application for enlargement.

See S. 17, Subs (3), (4), as to powers of Comptroller to enlarge the times for payments of fees.

The fees payable on enlarging the time, are, for enlarging time one month £3, 2 months £7, 3 months £10.

In other cases. 47. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Comptroller if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct.

AMENDMENT OF SPECIFICATION (a).

Request for leave to amend. 48. A request (b) for leave to amend a specification (c) shall be signed by the applicant or patentee and accompanied by a copy of the original specification and drawings,

showing in red ink the proposed amendment, and shall be advertised by publication of the request and the nature of the proposed amendment in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may in each case direct. Advertisement.

(a) These Rules do not apply to amendment of clerical errors, as to which see S. 91.

(b) For Form see Patents Forms, F.

(c) As to amendment of specification see S. 18.

49. A notice (a) of opposition to the amendment shall state the ground or grounds on which the person giving such notice (herein-after called the opponent) intends to oppose the amendment, and shall be signed by him. Such notice shall state his address for service in the United Kingdom. Notice of opposition.

(a) For form see Patents Forms, G.

50. On receipt of such notice a copy thereof shall be furnished by the Comptroller to the applicant or patentee, as the case may be (herein-after called the applicant). Copy for the applicant.

51. Within 14 days after the expiration of one month from the first advertisement of the application for leave to amend, the opponent shall leave at the Patent Office statutory declarations (a) in support of his opposition and deliver to the applicant a list thereof. Opponent's evidence.

(a) See Rule 20.

52. Upon such declarations being left, and such list being delivered, the provisions of Rules 36, 37, 38, and 39 shall apply to the case, and the further proceedings therein shall be regulated in accordance with such provisions as if they were here repeated. Further proceedings.

53. The decision of the Comptroller in the case shall be notified by him to the parties. Decision to be notified to parties.

Either party may appeal to law officer. S. 18.

54. Where leave to amend is given the applicant shall, if the Comptroller so require, and within a time to be Requirements thereon.

limited by him, leave at the Patent Office a new specification and drawings as amended, to be prepared in accordance with Rules 10, 28, and 29.

Leave by
Order of
Court.

55. Where a request for leave to amend is made by or in pursuance of an order of the Court or a judge, an official or verified copy of the order shall be left with the request at the Patent Office.

This refers to amendment during an action for infringement. See S. 19.

Advertise-
ment of
amend-
ment.

56. Every amendment of a specification shall be forthwith advertised by the Comptroller in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may direct.

COMPULSORY LICENCES (a).

Petition for
compulsory
grant of
licences.

57. A petition (b) to the Board of Trade for an order upon a patentee to grant a licence shall show clearly the nature of the petitioner's interest, and the ground or grounds upon which he claims to be entitled to relief, and shall state in detail the circumstances of the case, the terms upon which he asks that an order may be made, and the purport of such order.

(a) See S. 22.

(b) For Forms of Application and Petition see Patents Forms, H and H1.

To be left
with evi-
dence at
Patent
Office.

58. The petition and an examined copy thereof shall be left at the Patent Office, accompanied by the affidavits, or statutory declarations, and other documentary evidence (if any) tendered by the petitioner in proof of the alleged default of the patentee.

Directions
as to fur-
ther pro-
ceedings
unless peti-
tion re-
fused.

59. Upon perusing the petition and evidence, unless the Board of Trade shall be of opinion that the order should be at once refused, they may require the petitioner to attend before the Comptroller, or other person or persons appointed by them, to receive his or their directions as to further proceedings upon the petition.

The applicant is required to make out a *prima facie* case before giving the patentee any notice of the application.

60. If and when a *prima facie* case for relief has been made out to the satisfaction of the Board of Trade, the petitioner shall upon their requisition, and on or before a day to be named by them, deliver to the patentee copies of the petition and of the affidavits or statutory declarations and other documentary evidence (if any) tendered in support thereof. Procedure.
Petitioner's evidence.

61. Within 14 days after the day of such delivery the patentee shall leave at the Patent Office his affidavits or statutory declarations in opposition to the petition, and deliver copies thereof to the petitioner. Patentee's evidence.

62. The petitioner within 14 days from such delivery shall leave at the Patent Office his affidavits, or statutory declarations in reply, and deliver copies thereof to the petitioner (a); such last-mentioned affidavits or declarations shall be confined to matters strictly in reply. Evidence in reply.

(a) "Petitioner" is evidently a misprint for "patentee."

63. Subject to any further directions which the Board of Trade may give the parties shall then be heard at such time, before such person or persons, in such manner, and in accordance with such procedure as the Board of Trade may, in the circumstances of the case, direct, but so that full opportunity shall be given to the patentee to show cause against the petition. Further proceedings.

The power of ordering licences to be granted is by S. 22 vested in the Board of Trade.

REGISTER OF PATENTS.

64. Upon the sealing of a patent the Comptroller shall cause to be entered in the Register of Patents (a) the name, address, and description of the patentee as the grantee thereof, and the title of the invention. Entry of grant.

(a) See S. 23.

65. Where a person becomes entitled to a patent or to any share or interest therein, by assignment (a) either throughout the United Kingdom and the Isle of Man, or for any place or places therein (b), or by transmission or other operation of law, a request (c) for the entry of his Request for entry of subsequent proprietorship.

name in the register as such complete or partial proprietor of the patent, or of such share or interest therein, as the case may be, shall be addressed to the Comptroller, and left at the Patent Office.

(a) See also S. 87. As to licences see Rule 74.

(b) Power to assign for particular places is given by S. 36.

(c) For Form of request see Patents Forms, L.

Signature
of request.

66. Such request shall in the case of individuals be made and signed by the person requiring to be registered as proprietor, or by his agent duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate by their agent, authorised in like manner.

Particulars
to be stated
in request.

67. Every such request (a) shall state the name, address, and description of the person claiming to be entitled to the patent, or to any share or interest therein, as the case may be (herein-after called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the patent, or such share or interest therein as aforesaid, has been assigned or transmitted (b).

(a) See Patent Forms, Form L.

(b) Marriage no longer acts as a transmission of a Patent, Design, or Trade Mark. See Married Women's Property Act, 1882.

On death, particulars should be given of the Will or Letters of Administration.

On bankruptcy, particulars should be given of the Certificate of appointment of the trustee, since such certificate operates as an assignment. See Bankruptcy Act, 1883, SS. 55 (4), 138.

The document of which particulars are so given must itself be produced (see Rule 68), and an examined copy left with the request (see Rule 69).

Production
of docu-
ments of
title and
other proof.

68. Every assignment and every other document containing, giving effect to, or being evidence of, the transmission of a patent or affecting the proprietorship thereof, as claimed by such request, except such documents as are matters of record, shall be produced to the Comptroller, together with the request above prescribed, and such other proof of title as he may require for his satisfaction.

As to a document which is a matter of record, an official or certified copy thereof shall in like manner be produced to the Comptroller.

69. There shall also be left with the request an examined copy of the assignment or other document above required to be produced. Copies for Patent Office.

As to a document which is a matter of record, an official or certified copy shall be left with the request in lieu of an examined copy.

70. A body corporate may be registered as proprietor by its corporate name. Body corporate.

By S. 117, "Person" is defined so as to include body corporate.

71. Where an order has been made by Her Majesty in Council for the extension (a) of a patent for a further term or for the grant of a new patent, or where an order has been made by the Court for the revocation of a patent or the rectification of the register under section 90 of the said Act or otherwise affecting the validity or proprietorship of the patent, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be. Entry of Orders of the Privy Council or of the Court.

(a) See S. 25.

72. Upon the issue of a certificate of payment under Rule 45, the Comptroller shall cause to be entered in the Register of Patents a record of the amount and date of payment of the fee on such certificate. Entry of payment of fees on issue of certificate.

73. If a patentee fails to make any prescribed payment within the prescribed time (a) or any enlargement (b) thereof duly granted, such failure shall be duly entered in the register. Entry of failure to pay fees.

(a) See First Schedule to these Rules as to times of payment.

(b) See Rule 46.

74. An examined copy of every licence granted under a patent shall be left at the Patent Office by the licensee, Entry of licences.

with a request that a notification thereof may be entered in the register. The licensee shall cause the accuracy of such copy to be certified as the Comptroller may direct, and the original licence shall at the same time be produced and left at the Patent Office if required for further verification.

The fee for entry of licence is 10s. See First Schedule to these Rules.

Hours of
inspection
of register.

75. The register of patents shall be open to the inspection of the public on every week day between the hours of ten and four, except on the days and at the times following :—

- (a.) Christmas day, Good Friday, the day observed as Her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England ; or
- (b.) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office ;
- (c.) Times when the register is required for any purpose of official use.

Certified
copies of
documents.

76. Certified copies of any entry in the register, or certified copies of, or extracts from, patents, specifications, disclaimers, affidavits, statutory declarations, and other public documents in the Patent Office, or of or from registers and other books kept there, may be furnished by the Comptroller on payment of the prescribed fee.

The fee for office copies is 4d. for every 100 words (but never less than 1s).

The fee for certifying office copies is 1s. each.

POWER TO DISPENSE WITH EVIDENCE, &c.

77. Where, under these Rules, any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the

Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

See also S. 99.

REPEAL.

78. All general rules made by the Lord Chancellor, or Repeal. by any other authority, under the Patent Law Amendment Acts, and in force on the 31st day of December 1883, shall be and they are hereby repealed as from that date, without prejudice, nevertheless, to any application then pending.

See S. 113.

Dated the 21st day of December 1883.

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

PATENTS INSTRUCTIONS

ISSUED FROM

THE PATENT OFFICE,

25, SOUTHAMPTON BUILDINGS, CHANCERY LANE, LONDON, W.C

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Information for intending Applicants for Patents for Inventions.

Appli-
cations.

1. All applications and communications must be made in English. No models are required.

2. Any person, whether a British subject or not, may make an application for a patent.

3. Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

4. Applications may be left at the Patent Office or be sent, prepaid, by post. Applications sent by post must be addressed to the Comptroller, Patent Office.

5. Forms of application may be obtained at the under-mentioned places in the United Kingdom.

List of Places at which Stamped Forms under the Patents Designs and Trade Marks Act, 1883, may be obtained.

1. At the Inland Revenue Office, Royal Courts of Justice. Stamped forms, where obtainable.

2. At the following Post Offices :

London General Post Office, E.C.

District Post Office, 226, Commercial Road, E.

„ 9, Blackman Street, Borough, S.E.

„ Charing Cross, W.C.

„ 28, Eversholt Street, Camden Town, N.W.

Post Office, 12, Parliament Street, S.W.

ENGLAND AND WALES.		
Accrington.	Doncaster.	Newport (Mon.).
Altrincham.	Dorchester.	Northallerton.
Ashton-under-Lyne.	Driffield.	Northampton.
Barnsley.	Droitwich.	Nottingham.
Barrow-in-Furness.	Dudley.	Nuneaton.
Bedford.	Durham.	Oldbury.
Beverley.	Exeter.	Oldham.
Birkenhead.	Gateshead.	Pattingham.
Birmingham.	Goole.	Plymouth.
Blackburn.	Greenwich.	Pontefract.
Bolton.	Guildford.	Portsmouth.
Bradford.	Halifax.	Prescot.
Brighton.	Hartlepool.	Preston.
Bristol.	Huddersfield.	Reading.
Bromsgrove.	Hull.	Redditch.
Burnley.	Ipswich.	Richmond (Yorks).
Burslem.	Keighley.	Ripon.
Burton-on-Trent.	Kendal.	Rochdale.
Bury.	Kidderminster.	Rotherham.
Cambridge.	Knaresbro'.	Rugby.
Carlisle.	Knutsford.	Salford.
Chatham.	Lancaster.	St. Helen's.
Chester.	Leamington.	Scarborough.
Clitheroe.	Leeds.	Sedgley.
Congleton.	Leicester.	Sheffield.
Coventry.	Lichfield.	Southampton.
Crewe.	Lincoln.	Stafford.
Darlaston.	Liverpool.	Stalybridge.
Derby.	Macclesfield.	Stockport.
Dewsbury.	Manchester.	Stoke-on-Trent.
	Middlesborough.	Stourport.
	Nantwich.	Stourbridge.
	Newcastle.	Sunderland.

PATENTS INSTRUCTIONS.

Swansea.	Wolverton.	Lanark.
Tamworth.	Woolwich.	Paisley.
Truro.	York.	Perth.
Tunstall.		Renfrew.
Wakefield.	SCOTLAND.	
Walsall.		IRELAND.
Warrington.	Aberdeen.	
Wednesbury.	Dumbarton.	Belfast.
West Bromwich.	Dundee.	Cork.
Whitby.	Edinburgh.	Dublin.
Widnes.	Glasgow.	Dundalk.
Wigan.	Greenock.	Galway.
Wolverhampton.	Inverness.	Wexford.

The declaration.

6. The “declaration” required on application when made before *a justice of the peace does not require any additional stamp* ; but when made before a Commissioner a 2s. 6d. impressed stamp is required. When such 2s. 6d. stamp is required the application form must be left with the Postmaster at one of the Post Offices included in the above list, who will get the form stamped. In London such forms can also be left at the Inland Revenue Office, at the Royal Courts of Justice.

The application.

7. An application for Provisional protection consists of—
- (a.) The form of application,* either Patent Form A or A1, fee 1l. each form.
 - (b.) The form of Provisional specification (Patent Form B) (gratis.)

8. An application for Complete protection consists of—
- (a.) The form of application, either Patent Form A or A1, as for a provisional protection fee 1l. each form ; and
 - (b.) The form of complete specification (Patent Form C) £3

Total £4

* *Note.*—There are two forms of application, namely, one Patent Form A, when the application is made by the applicant or applicants ; and Patent Form A1 when the invention is a “communication” from abroad.

In order to avoid unnecessary trouble, applicants should carefully read the directions upon the forms of application before filling them up.

9. Where a complete specification is filed after a provisional protection has been allowed (which must be within ^{Complete specification.} nine months from the date of the application for provisional protection) the cost of the form for the complete specification to be furnished is, fee 3*l*. (Patent Form C).

N.B.—A second application form is not required.

10. The “declaration” in the form of application must ^{Agents.} be signed by the applicant or applicants; but all other communications may be made by or through agents duly authorised to the satisfaction of the Comptroller.

11. The specifications and all other documents must be ^{Docu-ments.} written or printed in large and legible characters upon strong wide-ruled foolscap paper of a size of 13 inches by 8 inches (on one side only), leaving a margin of two inches on the left-hand part thereof; and the signatures of the applicants or agents thereto must be written in a large and legible hand.

12. The drawings accompanying provisional or complete ^{Drawings.} specifications must be made upon half-sheets or sheets of imperial drawing paper, to be within a border line of 19 inches by 12 inches, or 27 inches by 19 inches, with a margin of $\frac{1}{2}$ an inch all round.

A copy of the drawings will be required upon *rolled* imperial drawing paper or upon thin Bristol board of the same dimensions as the original drawing or drawings. All the lines must be absolutely black, Indian ink of the best quality to be used, and the same strength or colour of the ink maintained throughout the drawing. Any shading must be in lines clearly and distinctly drawn and as open as is consistent with the required effect. Section lines should not be too closely drawn. No colour must be used for any purpose upon the copy of the drawings. All letters and figures of reference must be bold and distinct. The border line should be one fine line only. The

drawings must not be folded, but must be delivered at the Patent Office either in a perfectly flat state or rolled upon a roller so as to be free from creases or breaks.*

Drawings
for journal.

13. With the view of preparing an illustrated journal of patented inventions as directed by the Act, every applicant must, after his application has been accepted, also furnish the Patent Office with the drawing and concise explanatory statement required by Rule 31.

Rules, how
obtained.

14. Copies of the Patent Rules (price, prepaid, [7*d.*], including postage within the United Kingdom) can be obtained from the Patent Office Sale Branch, 38, Cursitor Street, Chancery Lane, E.C.

Applications for copies of the Rules should be addressed to the Comptroller, at the above address.

Time
applica-
tion con-
tinues in
force.

15. An application for provisional protection continues in force nine months from the date of the application ; but if a patent is required in connexion with such application, unless a "complete" specification be left at the Patent Office within *nine* months from the date of the application for such provisional protection, the application will be deemed to be abandoned.

Fees, how
paid.

16. Every patent will be granted for the term of 14 years from its date, subject to the payment of 50% before the end of the 4th year of the term, and 100% before the end of the 8th year, or in lieu thereof to the payment of annual or renewal fees of 10%, 15%, and 20%, commencing before the expiration of the 4th year of the term, and extending to and inclusive of the 13th year ; for amount of fees, see Schedule of Fees annexed to the Rules. These payments must be made by way of stamped forms which may be obtained at the places set forth in the list in paragraph 5.

* As the drawings accompanying the provisional and complete specification respectively are copied at the Patent Office for publication by the process of lithography, this rule must be strictly observed in order that correct copies may be made.

17. The fees to be paid upon applications made prior to the 1st of January 1884, are : (a) Fees on applications made prior to 1st Jan. 1884.
- (a.) The seventh year's payment, which under the conditions of Letters Patents is payable before the end of the seventh year, must be paid as heretofore in one sum of 100%.
- (b.) The payments, which under the condition of the Letters Patent are payable before the end of the third year (1884), are, by the Act of 1883, made payable before the end of the fourth year (1885); the fee may be paid either in one sum or by annual payments (*see* Schedule of Fees).
- (c.) The stamp duties required under the Patent Law Amendment Acts of 1852-3, must be paid upon subsequent proceedings in connexion with Applications made prior to 1st January 1884, up to and including the 5% stamp duty upon filing the "final" specification as required by Act. All applications under the Acts of 1852-3 must be completed in accordance with their provisions up to the stage of filing the final specification. Patents granted upon applications made prior to the 1st January 1884 are exempt from the provisions of the Act of 1883 as to the compulsory grant of Licenses. Procedure on such-applications.

(a) See Introduction.

RULES

REGULATING THE PRACTICE AND PROCEDURE ON
APPEALS TO THE LAW OFFICERS.

Time for
appeal.

I. When any person intends to appeal to the law officer from a decision of the Comptroller in any case in which such appeal is given by the Act (*a*), he shall within 14 days from the date of the decision appealed against file in the Patent Office, a notice (*b*) of such his intention.

(*a*) For cases in which appeal is allowed to law officer see note to S. 38.

(*b*) For Form of Notice see Patents Forms, T. A fee of 3*l.* is payable.

Notice of
appeal.

II. Such notice shall state the nature of the decision appealed against, and whether the appeal is from the whole, or part only, and if so, what part of such decision.

To whom
sent.

III. A copy of such notice of intention to appeal shall be sent by the party so intending to appeal to the law officers' clerk at room 549, Royal Courts of Justice, London; and when there has been an opposition before the Comptroller (*a*), to the opponent or opponents, and when the Comptroller has refused to seal a patent on the ground that a previous application for a patent for the same invention is pending, to the prior applicant (*b*).

(*a*) *E.g.*, By another applicant under S. 7, or opposition under S. 11.

(*b*) See S. 7, Subs. (5), (6).

Papers.

IV. Upon notice of appeal being filed, the Comptroller shall forthwith transmit to the law officers' clerk all the papers relating to the matter of the application in respect of which such appeal is made.

Extension
of time.

V. No appeal shall be entertained of which notice is not given within 14 days from the date of the decision

appealed against, or such further time as the Comptroller may allow, except by special leave upon application to the law officer.

VI. Seven days' notice, at least, of the time and place appointed for the hearing of any appeal, shall be given by the law officers' clerk, unless special leave be given by the law officer that any shorter notice be given. Notice of hearing.

VII. Such notice shall in all cases be given to the Comptroller and the appellant; and, when there has been an opposition before the Comptroller, to the opponent or opponents; and, when the Comptroller has refused to seal a patent on the ground that an application for a patent for the same invention is pending, to the prior applicant. To whom given.

VIII. The evidence used on appeal to the law officer shall be the same as that used at the hearing before the Comptroller (a); and no further evidence shall be given, save as to matters which have occurred or come to the knowledge of either party, after the date of the decision appealed against, except with the leave of the law officer upon application for that purpose. Evidence.

(a) See Patents Rules, 13, 35-36, and 51-52.

IX. The law officer shall, at the request of either party, order the attendance at the hearing on appeal, for the purpose of being cross-examined, of any person, who has made a declaration, in the matter to which the appeal relates, unless in the opinion of the law officer, there is good ground for not making such order. Cross-examination.

X. Any person requiring the attendance of a witness for cross-examination shall tender to the witness whose attendance is required a reasonable sum for conduct money. Conduct money.

XI. Where the law officer orders that costs shall be paid by any party to another, he may fix the amount of such costs, and if he shall not think fit to fix the amount Costs.

thereof, he shall direct by whom and in what manner the amount of such costs shall be ascertained.

Payment
of costs.

XII. If any costs so ordered to be paid be not paid within 14 days after the amount thereof has been so fixed or ascertained, or such shorter period as shall be directed by the law officer, the party to whom such costs are to be paid may apply to the law officer for an order (a) for payment under the provisions of section 38 of the Act.

(a) Such order may be made a Rule of Court. See S. 38.

Evidence
how filed.

XIII. All documentary evidence required, or allowed by the law officer to be filed, shall be subject to the same regulations, in all respects, as apply to the procedure before the Comptroller, and shall be filed in the Patent Office, unless the law officer shall order to the contrary.

Sending
notices by
post.

XIV. Any notice or other document required to be given to the law officers' clerk, under these rules, may be sent by a prepaid letter through the post.

HENRY JAMES, A.-G.

FARRER HERSCHELL, S.-G.

FIRST SCHEDULE.

LIST OF FEES PAYABLE ON AND IN CONNECTION WITH LETTERS PATENT.

Up to Sealing.

	£	s.	d.	£	s.	d.
1. On application for provisional protection	1	0	0			
2. On filing complete specification	3	0	0			
	<hr/>			4	0	0
or						
3. On filing complete specification with first application				4	0	0
4. On appeal from Comptroller to Law Officer.						
By appellant				3	0	0

	£	s.	d.
5. On notice of opposition to grant of patent. By opponent	0	10	0
6. On hearing by Comptroller. By applicant and by opponent respectively	1	0	0
<hr/>			
7. On application to amend specification :— Up to sealing. By applicant	1	10	0
8. After sealing. By patentee	3	0	0
9. On notice of opposition to amendment. By opponent	0	10	0
10. On hearing by Comptroller. By applicant and opponent respectively	1	0	0
11. On application to amend specification during action or proceeding. By patentee	3	0	0
<hr/>			
12. On application to the Board of Trade for a compulsory licence. By person applying	5	0	0
13. On opposition to grant of compulsory licence. By patentee	5	0	0
14. On certificate of renewal :— Before end of 4 years from date of patent	50	0	0
15. Before end of 7 years, or in the case of patents granted under the "Patents, Designs, and Trade Marks Act, 1883," before the end of 8 years from date of patent	100	0	0
or in lieu of the fees of 50 <i>l.</i> and 100 <i>l.</i> , the following annual fees :—			
16. Before the expiration of the— 4th year from the date of the patent	10	0	0
17. 5th " " " "	10	0	0
18. 6th " " " "	10	0	0
19. 7th " " " "	10	0	0
20. 8th " " " "	15	0	0

PATENTS FEES.

		£	s.	d.
21.	9th year from the date of the patent	15	0	0
22.	10th „ „ „ „	20	0	0
23.	11th „ „ „ „	20	0	0
24.	12th „ „ „ „	20	0	0
25.	13th „ „ „ „	20	0	0
On enlargement of time for payment of renewal fees :—				
26.	Not exceeding 1 month	3	0	0
27.	„ 2 months	7	0	0
28.	„ 3 months	10	0	0
29.	For every entry of an assignment, trans- mission, agreement, licence or extension of patent	0	10	0
30.	For duplicate of letters patent each	2	0	0
31.	On notice to Comptroller of intended exhibition of a patent under section 39	0	10	0
32.	Search or inspection fee each	0	1	0
33.	For office copies. every 100 words (but never less than one shilling)	0	0	4
34.	For office copies of drawings, cost accord- ing to agreement.			
35.	For certifying office copies, MSS. or printed each	0	1	0
36.	On request to Comptroller to correct a clerical error	0	5	0
37.	For certificate of Comptroller under section 96	0	5	0
38.	For altering address in register. . . .	0	5	0

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

21st December 1883.

Approved :

(Signed) CHARLES C. COTES,
HERBERT J. GLADSTONE,
Lords Commissioners of
Her Majesty's Treasury.

4th December 1883.

THE SECOND SCHEDULE

FORMS.

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<p>£1.</p> <p>PATENT.</p>

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Form A. ⁽¹⁾.APPLICATION FOR PATENT ⁽²⁾.

(a)

(a) Here insert name, full address, and calling of applicant or applicants.

do solemnly and sincerely declare that in possession of an invention for (b)

(b) Here insert title of invention.

that the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of knowledge and belief; and humbly pray that a patent may be granted for the said invention.

And make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(c) Signature of applicant or applicants.

(c)

(d) If declared by more than one applicant and at different times or places, insert after "Declared" the words "by the above-named."

Declared at (d) in the this day of 18 .

Before me,
(e)

(e) Signature and title of the person before whom the declaration is made.

[Declared at (d) in the this day of 18 .

Before me,
(e)

(f) If not required as in note (d), strike out part within brackets.

(f)]

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted, and the declaration must be made before a British Consular Officer, or, where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

⁽¹⁾ This form is substituted for Form A in the 1st Schedule to the Act.

⁽²⁾ See s. 5.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form A1. (1).*APPLICATION FOR PATENT FOR INVENTIONS COMMUNICATED
FROM ABROAD.

£1.

PATENT.

I (a) .
of in the county of
do solemnly and sincerely declare that I am in possession
of an invention for (b)

(a) Here insert
name, full ad-
dress, and calling
of applicant.

(b) Here insert
title of inven-
tion.

which invention has been communicated to me from abroad
by (c)

(c) Here insert
name, address,
and calling of
communicant.

that I claim to be the true and first inventor thereof ; and
that the same is not in use within this realm by any other
person or persons to the best of my knowledge and belief ;
and I humbly pray that a patent may be granted to me
for the said invention.

And I make the above solemn declaration conscientiously
believing the same to be true, and by virtue of the pro-
visions of the Statutory Declarations Act, 1835.

Declared at (d) in the county of
this day of 18 .
Before me,
(e)

(d) Signature
of applicant.

(e) Signature
and title of the
officer before
whom the decla-
ration is made.

NOTE.—Where the above declaration is made out of the
United Kingdom the words, “and by virtue of the
Statutory Declarations Act, 1835,” must be omitted, and
the declaration must be made before a British Consular
Officer, or, where it is not reasonably practicable to make
it before such officer, then before a public officer duly
authorised in that behalf.

(1) No similar form is in the Schedules to the Act. See Rule 5.

To be issued with Form A or A1.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Form B ⁽¹⁾.

PROVISIONAL SPECIFICATION ⁽²⁾.

(To be furnished in Duplicate.)

(a) Here insert (a)
title, as in declaration.

(b) Here insert (b)
name, full address, and calling
of applicant or
applicants, as in
declaration.

do hereby declare the nature of the said invention for

(c) Here insert to be as follows (c) :
short description
of invention.

NOTE.—No stamp is required on this document, which must form the commencement of the Provisional Specification ; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on left hand of paper. The Provisional Specification and the “ Duplicate ” thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows :—

“ Dated this day of 18 .”

⁽¹⁾ This form is substituted by Rule 5 for Form B in the 1st Schedule to the Act.

⁽²⁾ See s. 5.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Form C ⁽¹⁾.

COMPLETE SPECIFICATION ⁽²⁾.

(To be furnished in Duplicate—one unstamped.)

<p>£3.</p> <p>PATENT.</p>

(a)

(a) Here insert title, as in declaration.

(b)

(b) Here insert name, full address, and calling of applicant or applicants, as in declaration.

do hereby declare the nature of invention for

and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (c) :—

(c) Here insert full description of invention, which must end with a distinct statement of claim or claims, in the following form:

“ Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is,

(1.)
(2.)
(3.) ”
Here state distinctly the features of novelty claimed.

NOTE.—This document must form the commencement of the complete Specification ; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on left hand of paper. The complete Specification and the “ Duplicate ” thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows :—

“ Dated this day of 18 .”

⁽¹⁾ This form is substituted by Rule 5 for Form C in the 1st Schedule to the Act.

⁽²⁾ See s. 8.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form D.*FORM OF OPPOSITION TO GRANT OF PATENT ⁽¹⁾.*[To be accompanied by an unstamped copy.]*

* Here state
name and full
address.

*I

hereby give notice of my intention to oppose the grant of
Letters Patent upon application No. of ,
applied for by

† Here state upon the ground†
upon which of
the grounds of
opposition per-
mitted by section
11 of the Act the
grant is opposed.

† Here insert
signature of op-
ponent or agent.

(Signed)†

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 11.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Form E.

FORM OF APPLICATION FOR HEARING BY THE COMPTROLLER ⁽¹⁾.

<p>£1.</p> <p>PATENT.</p>

In Cases of Refusal to Accept, Opposition, or Applications for Amendments, &c.

SIR,

of (a)

(a) Here insert full address.

hereby apply to be heard in reference to

and request that I may receive due notice of the day fixed for the hearing.

Sir,
Your obedient Servant,

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See Patent Rules, 12.

30s. or £3. PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form F.*FORM OF APPLICATION FOR AMENDMENT OF SPECIFICATION OR DRAWINGS ⁽¹⁾.

* Here state name and full address of applicant or patentee.

seek leave to amend the specification of Letters Patent No. of 188 , as shown in red ink in the copy of the original specification hereunto annexed

† Here state reasons for seeking amendment; and where the applicant is not the patentee, state what interest he possesses in the letters patent.

My reasons for making this amendment are as followst

(Signed)

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See ss. 18—21.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form G.*FORM OF OPPOSITION TO AMENDMENT OF SPECIFICATION
OR DRAWINGS ⁽¹⁾.

10s.

PATENT.

[To be accompanied by an unstamped copy.]

*

* Here state
name and full
address of oppo-
nent.

hereby give notice of objection to the proposed amend-
ment of the specification or drawings of Letters Patent
No. of 188 , for the following reason : †

† Here state
reason of opposi-
tion.

(Signed)

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

(1) See s. 18.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form H.*FORM OF APPLICATION FOR COMPULSORY GRANT OF
LICENSE ⁽¹⁾.*[To be accompanied by an unstamped copy.]*

* Here state *
name and full
address of appli-
cant.

hereby request you to bring to the notice of the Board
of Trade the accompanying petition for the grant of a
license to me by †

† Here state
name and ad-
dress of paten-
tee, and number
and date of his
patent.

(Signed)

NOTE.—The petition must clearly set forth the facts
of the case and be accompanied by an examined copy thereof.
See form next page.

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 22.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form H1.*FORM OF PETITION FOR COMPULSORY GRANT OF LICENSES ⁽¹⁾.

To the LORDS of the COMMITTEE of PRIVY COUNCIL
for TRADE.

THE PETITION of (a) of in the (a) Here insert name, full address, and description.
county of , being a person interested in the
matter of this petition as hereinafter described :— (b) Here insert title of invention.

SHEWETH as follows :—

1. A patent dated No.
was duly granted to
for an invention of (b)

2. The nature of my interest in the matter of this
petition is as follows :—(c)

3. (d)

Having regard to the circumstances above stated, the
petitioner alleges that by reason of the aforesaid default
of the patentee to grant licenses on reasonable terms (e)

Your petitioner therefore prays
that an order may be made by the
Board of Trade (f)

or that the petitioner may have
such other relief in the premises as
the Board of Trade may deem just.

⁽¹⁾ See s. 22.

(a) Here insert name, full address, and description.

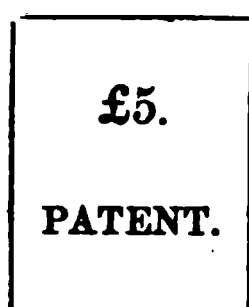
(b) Here insert title of invention.

(c) Here state fully the nature of petitioner's interest.

(d) Here state in detail the circumstances of the case under section 22 of the said Act, and show that it arises by reason of the default of the patentee to grant licenses on reasonable terms. The statement of the case should also show as far as possible that the terms of the proposed order are just and reasonable. The paragraphs should be numbered consecutively.

(e) Here state the ground or grounds on which relief is claimed in the language of section 22 subsections (a), (b) or (c), as the case may be.

(f) Here state the purport and effect of the proposed order and the terms as to the amount of royalties, security for payment, or otherwise, upon which the petitioner claims to be entitled to the relief in question.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form I.*FORM OF OPPOSITION TO COMPULSORY GRANT
OF LICENSE ⁽¹⁾.

* Here state *
name and full
address.

hereby give notice of objection to the application of

for the compulsory grant of a License under Patent No.
of 188 .

(Signed)

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 22.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form J.*APPLICATION FOR CERTIFICATE OF PAYMENT OR
RENEWAL ⁽¹⁾.

hereby transmit the fee prescribed for the
continuation in force of Patent No. ,
of 18 , for a further period of .

Name*
Address

* Here insert
name and full
address of pa-
tentee or his
agent.

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

CERTIFICATE OF PAYMENT OR RENEWAL ⁽¹⁾.

Letters Patent No. of 188 .

18 .

PATENT.

This is to certify that did this
day of 18 , make the prescribed payment
of £ in respect of a period of from ,
and that by virtue of such payment the rights of
remain in force.*

* See section
17 of the Pa-
tents, Designs,
and Trade Marks
Act, 1883.

Seal.

Patent Office, London.

⁽¹⁾ See 1st Schedule to the Patent Rules.

£3, £7,
or £10.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Form K.

FORM OF APPLICATION FOR ENLARGEMENT OF TIME FOR
PAYMENT OF RENEWAL FEE ⁽¹⁾.

SIR,

I HEREBY apply for an enlargement of time for
month in which to make the payment of
£ upon my Patent, No.
of 188 .

I am,

Sir,

Your obedient Servant,

(a) Here insert
full address to
which receipt is
to be sent.

(a)

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 17.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form L.*FORM OF REQUEST TO ENTER NAME UPON THE REGISTER
OF PATENTS, AND OF DECLARATIONS IN SUPPORT
THEREOF ⁽¹⁾.

10s.

PATENT.

I (a),

hereby request that you will enter (b) name (c) in
the Register of Patents :—

(d) claim to be entitled (e)

of the Patent No. of 188 , granted to (f)

for (g)

by virtue of (h)

And in proof whereof I transmit the accompanying (i)
with an examined
copy thereof. (j)I am,
Sir,
Your obedient Servant,To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.(a) Or We.
Here insert
name, full ad-
dress, and de-
scription.
(b) My or our.
(c) Or names.(d) I or We.
(e) Here insert
the nature of the
claim.(f) Here give
name and ad-
dress, &c., of Pa-
tentee or Paten-
tees.(g) Here insert
title of the inven-
tion.(h) Here spe-
cify the particu-
lars of such docu-
ment, giving its
date, and the
parties to the
same, and show-
ing how the claim
here made is sub-
stantiated.(i) Here insert
the nature of the
document.(j) Where any
document which
is a matter of re-
cord is required
to be left, a certi-
fied or official
copy in lieu of an
examined copy
must be left.⁽¹⁾ See s. 87.

10s.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Form M.

FORM OF REQUEST TO ENTER NOTIFICATION OF LICENSE
IN THE REGISTER OF PATENTS ⁽¹⁾.

SIR,

I HEREBY transmit an examined copy of a license
granted to me by

under Patent No. of 188 , as well as the original
license for verification, and I have to request that a noti-
fication thereof may be entered in the Register.

I am,

Sir,

Your obedient Servant,

(a) Here insert (a)
full address.

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 87, and Patent Rules, 74.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form N.*APPLICATION FOR DUPLICATE OF PATENT ⁽¹⁾.

Date

£2.

PATENT.

SIR,

I REGRET to have to inform you that the Letters Patent,
dated* No.
granted to

[* Here insert
date, No., name,
and full address
of Patentee.]

for an invention of †

[† Here insert
title of inven-
tion.]

have been ‡

[‡ Here insert
the word "des-
troyed" or "lost,"
as the case may
be.]

I beg therefore to apply for the issue of a duplicate of
such Letters Patent. §

§ Here state in-
terest possessed
by applicant in
the Letters Pa-
tent.

[Signature of Applicant.]

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 37.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Form O.

NOTICE OF INTENDED EXHIBITION OF AN UNPATENTED
INVENTION ⁽¹⁾.

* Here state *
name and full
address of appli-
cant.

hereby give notice of my intention to exhibit a
of at the

† State "open- Exhibition, which† of 18 ,
ed" or "is to
open." under the provisions of the Patents, Designs, and Trade
Marks Act of 1883.

† Insert brief † herewith enclose
description of
invention, with
drawings if ne-
cessary.

(Signed)

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

(1) See s. 39.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form P.*FORM OF REQUEST FOR CORRECTION OF CLERICAL
ERROR ⁽¹⁾.

5s.

PATENT.

SIR,

I HEREBY request that the following clerical error (a) may be corrected in (b)

(a) or errors.

(b) Here state whether in application, specification, or register.

Signature
Full Address

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form Q.*CERTIFICATE OF COMPTROLLER-GENERAL ⁽²⁾.

Patent Office,
London,

5s.

PATENT.

188 .

I, _____, Comptroller-General of Patents,
Designs, and Trade Marks, hereby certify

⁽¹⁾ See s. 91.⁽²⁾ See s. 96.

<p>5s.</p> <p>PATENT.</p>

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form R.*FORM OF NOTICE FOR ALTERATION OF AN ADDRESS
IN REGISTER ⁽¹⁾.

SIR,

(a) Here state
name or names
and full address
of applicant or
applicants.

(a)

hereby request that address now upon the Register
may be altered as follows :—

(b) Here insert (b)
full address.

Sir,

Your obedient Servant,

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

<p>10s.</p> <p>PATENT.</p>

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form S.*FORM OF APPLICATION FOR ENTRY OF ORDER OF PRIVY
COUNCIL IN REGISTER ⁽²⁾.

(a) Here state (a)
name and full
address of appli-
cant.

hereby transmit an office copy of an Order in Council with
reference to (b)

(b) Here state
the purport of
the order.

Sir,

Your obedient Servant,

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 23.⁽²⁾ See s. 23.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Form T.*FORM OF APPEAL TO LAW OFFICER ⁽¹⁾.

I, (a) of (a)

hereby give notice of my intention to appeal to the Law Officer from (b)

of the Comptroller of the
188 , whereby he (c)

day of

No. (d) of the year 188 (d)

Signature
Date

N.B.—This notice has to be sent to the Comptroller General at the Patent Office, London, W.C., and a copy of same to the Law Officers' Clerk at Room 549, Royal Courts of Justice, London.

21st December 1883.

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

⁽¹⁾ See Rules regulating practice before law officer.

£3.
PATENT.

(a) Here insert name and full address of appellant.

(b) Here insert "the decision" or "that part of the decision," as the case may be.

(c) Here insert "refused [or allowed] application for Patent," or "refused [or allowed] application for leave to amend Patent," or otherwise, as the case may be.

(d) Insert number and year.

RULES

FOR THE

REGISTRATION OF DESIGNS; WITH CLASSIFICATION OF GOODS,

AND

TABLE OF FEES.

By virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following Rules :—

The section of the Act authorising the Board of Trade to make Rules is S. 101.

COMMENCEMENT.

1. These Rules may be cited as the Designs Rules, 1883, and shall come into operation from and immediately after the 31st day of December 1883.

This is the same date as the date of commencement of the Act. See S. 3.

INTERPRETATION.

Interpre-
tation.

2. In the construction of these Rules any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively.

The general definitions of the Act will be found in S. 117.

FEES.

Fees.

3. The fees to be paid under the said Act, so far as it relates to applications for and registration of designs, shall be the fees specified in the First Schedule hereto.

FORMS.

4. An application for the registration of a design shall be made in the Form E. in the Second Schedule hereto. The remaining forms in such Schedule may be used in all cases to which they are applicable.

Form E. is practically the same as Form E. in the First Schedule to the Act.

CLASSIFICATION OF GOODS.

5. For the purposes of the registration of designs and of these Rules, goods are classified in the manner appearing in the Third Schedule hereto.

APPLICATION FOR REGISTRATION.

6. All communications between an applicant for the registration of a design and the Comptroller or the Board of Trade, as the case may be, may be made by or through an agent duly authorised to the satisfaction of the Comptroller.

Unlike an application for a patent an application for registration of a design may be signed by an agent.

7. An application (a) for the registration of a design shall, with the prescribed fee (b), be left at the Patent Office, Designs Branch, or be sent prepaid by post, addressed to the Comptroller at the Patent Office, (Designs Branch,) 25, Southampton Buildings, Chancery Lane, London.

(a) For Form of Application see Designs Forms, E.

(b) 10s. for each design for single articles, except classes 13 and 14, when fee is 1s. For a set of articles for each class the fee is £1 for all classes. See First Schedule to Designs Rules.

8. An application for the registration of a design, and all drawings, sketches, photographs, or tracings of a design, and all other documents sent to or left at the Patent Office, Designs Branch, or otherwise furnished to the Comptroller or to the Board of Trade, shall be written, printed, copied, or drawn upon strong wide-ruled foolscap paper (on one side only), of the size of 13 inches by 8 inches, leaving a margin of not less than one inch

and a half on the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand.

The Comptroller may in any particular case vary the requirements of this Rule as he may think fit.

Sketches
and draw-
ings.
Nature of
design.

9. An application for the registration of a design shall be accompanied by a sketch or drawing (*a*), or by three exactly similar drawings, photographs, or tracings of the design, or by three specimens of the design, and shall, in describing the nature of the design, state whether it is applicable for the pattern or for the shape or configuration of the design, and the means by which it is applicable.

When sketches, drawings, or tracings are furnished they must be fixed.

When the articles to which designs are applied are not of a kind which can be pasted into books, drawings, photographs, or tracings of such designs shall be furnished.

(*a*) But if one sketch of the design be sent with the application Form, so as to secure immediate registration, three similar drawings are to be sent afterwards. See *Instructions*, 4—10.

Acknow-
ledgment
to appli-
cant.

10. On receipt of an application for registration the Comptroller shall send to the applicant an acknowledgment thereof.

Notice
of registra-
tion.

11. If the Comptroller determines to register a design, he shall as soon as may be send to the applicant a certificate of such registration (*a*) in the prescribed form (*b*), sealed with the seal of the Patent Office.

(*a*) See S. 49.

(*b*) Designs Forms, Form G.

Applica-
tions may
be sent by
post.

12. Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office or to the Comptroller or to any other person under these Rules may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left,

made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

This Rule forms S. 97 of the Act.

13. Before exercising any discretionary power given to the Comptroller by the said Act adversely to an applicant for registration of a design the Comptroller shall give him ten days notice of the time when he may be heard personally or by his agent before the Comptroller. Hearing by
Comptroller.

See S. 94.

14. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter. Hearing by
Comptroller.

The time allowed is not five days after the receipt of the notice, but five days from the day on which the notice would be delivered within the ordinary course of post.

15. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant. Notification of
Comptroller's
decision.

APPEAL TO THE BOARD OF TRADE (a).

16. Where the Comptroller refuses to register a design, and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Designs Branch, a notice (b) of such his intention. Notice of
appeal to
Board of
Trade.

(a) See S. 47, sub-secs. (6), (7).

(b) For Form of Notice see Designs Forms, F.

17. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof. Statement
on appeal.

18. The applicant shall forthwith on leaving such notice Notice to
Secretary

of Board of Trade. send a copy thereof to the Secretary of the Board of Trade,
No. 7, Whitehall Gardens, London.

Directions by Board of Trade. 19. The Board of Trade may thereupon give such directions (if any) as they may think fit for the purpose of the hearing of the appeal for the Board of Trade.

Notice of time of hearing. 20. Seven days notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing of the appeal shall be given to the Comptroller and the applicant.

REGISTER OF DESIGNS (*a*).

Registering design. 21. Upon the sealing of a certificate of registration the Comptroller shall cause to be entered in the register of designs the name, address, and description of the registered proprietor, and the date upon which the application for registration was received by the Comptroller, which day shall be deemed to be the date of the registration.

(*a*) See S. 55.

Subsequent proprietors. 22. Where a person becomes entitled to the copyright in a registered design, or to any share or interest therein (*a*), by assignment, transmission, or other operation of law, or where a person acquires any right to apply the design either exclusively or otherwise, a request (*b*) for the entry of his name in the register as such proprietor of the design, or as having acquired such right, as the case may be, (hereinafter called the claimant,) shall be addressed to the Comptroller, and left at the Patent Office, Designs Branch.

(*a*) See S. 87.

(*b*) For Form of Request see Designs Forms, K.

Signature to request. 23. Every such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor (*a*); and in the case of a firm or partnership, by some one or more members of such firm or partnership, or, in either case, by his or their agent respectively duly authorised to the satisfaction of the

Comptroller; and in the case of a body corporate, by their agent authorised in like manner.

(a) Signature of agent will not do except in the cases stated, i.e., firms and bodies corporate.

24. Every such request shall state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which the request is made, so as to show the manner in which and the person or persons to whom the design has been assigned or transmitted, or the person or persons who has or have acquired such right as aforesaid, as the case may be. Particulars in request.

See note to Rule 67 of Patent Rules as to particulars.

25. Every such request shall be accompanied by a statutory declaration to be thereunder written verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the design or the right to apply the same, as the case may be, as claimed by such request. Statutory declaration with request.

26. The claimant shall furnish to the Comptroller such other proof of title as he may require for his satisfaction. Proof of title if required.

27. A body corporate may be registered as proprietor by its corporate name. Corporate name.

The word "person" is defined in the Act as including "body corporate." See S. 117.

28. Where an order has been made by the Court, under section 90 of the said Act, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified, or the purport of such order shall otherwise be duly entered in the register, as the case may be. Notice of order of Court.

POWER TO DISPENSE WITH EVIDENCE.

29. Where under these Rules any person is required to Comptroller's

discretion
as to evi-
dence.

do any act or thing, or to sign any document, or make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

See also S. 99.

AMENDMENTS.

Amend-
ments.

30. Any document, drawings, sketches, or tracings for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which, in the opinion of the Comptroller, may be obviated without detriment to the interests of any person may be corrected, if the Comptroller think fit, and upon such terms as he may direct.

See S. 91 as to correction of clerical errors.

ENLARGEMENT OF TIME.

Enlarge-
ment of
time.

31. The time prescribed by these Rules for doing any act or taking any proceeding thereunder may be enlarged by the Comptroller, if he think fit, and upon such terms as he may direct.

MARKING GOODS.

Registra-
tion mark.

32. Before the delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in any of the classes one to twelve in the Third Schedule hereto, cause each such article to be marked with the abbreviation "R" and the number appearing on the certificate of

registration, and shall, if such article is included in the classes thirteen or fourteen (a) in the Third Schedule hereto, cause each such article to be marked with the abbreviation "REG^d".

(a) Classes 13 and 14 include printed or woven designs on textile piece goods and handkerchiefs and shawls.

INSPECTION.

33. On such days and during such hours as the Office Comptroller shall from time to time determine and notify ^{hours.} by a placard posted at the Patent Office any person paying the prescribed fee (a) may, on production of the number of any design of which the copyright has ceased, inspect such design (b), and any person paying the prescribed fee (c) may take a copy or copies of such design.

(a) 1s. for each quarter of an hour. See Designs Rules, 1st Schedule.

(b) See S. 52 as to right to inspect such designs.

(c) Fee is according to agreement. See Designs Rules, 1st Schedule.

CERTIFICATE BY COMPTROLLER.

34. Where a certificate is required for the purpose of Certificate any legal proceeding or other special purpose as to any ^{in legal} entry, matter, or thing which the Comptroller is authorised by the said Act or these Rules to make or do, the Comptroller may, on a request (a) in writing and on payment of the prescribed fee (b), give such certificate (c), which shall also specify on the face of it the purpose for which it has been requested as aforesaid.

(a) For Form of Request see Designs Forms, I.

(b) 5s. See Designs Rules, 1st Schedule.

(c) For Form of Certificate see Designs Forms, J.

SEARCHES ON PRODUCTION OF SKETCH OF DESIGN (a).

35. The Comptroller may, on receipt of the prescribed Search fee (b), make searches among the designs registered at the Patent Office after the commencement of the Act, and inform any person requesting him so to do whether a particular design produced by such person, and to be

applied to goods in any particular class, is or is not identical with or an obvious imitation of any design applied to such goods and registered since the commencement of the Act.

(a) See S. 53.

(b) 5s.

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS (a).

Notice of
exhibition.

36. Any person desirous of exhibiting a design, or any article to which a design has been applied, at an industrial or international exhibition, or of publishing a description of a design during the period of the holding of the exhibition, shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the Comptroller seven days notice (b) in writing of his intention to exhibit the design or article, or to publish a description of the design, as the case may be.

For the purpose of identifying the design in the event of an application to register the same being subsequently made, the applicant shall furnish to the Comptroller a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as the Comptroller may in each case require.

(a) See S. 57.

(b) For Form of Notice see Designs Forms, L.

REPEAL.

Repeal of
previous
Rules.

37. All general rules and regulations made by any authority under the Acts relating to the Copyright of Designs, and in force on the 31st December 1883, shall be, and they are hereby repealed as from that date without prejudice nevertheless to any application then pending (a).

(a) See S. 113.

J. CHAMBERLAIN,
President of the Board of Trade.

21st December, 1883.

INSTRUCTIONS TO PERSONS

WHO WISH TO

REGISTER DESIGNS UNDER THE PATENTS
DESIGNS AND TRADE MARKS ACT, 1883.

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PRELIMINARY.

1. The Patents, Designs, and Trade Marks Act, 1883, ^{Copies of} and the Rules published in pursuance of that Act for the ^{Rules.} Registration of Designs, should be carefully studied.

Copies of the Rules, together with the Act, may be obtained on payment of 2s. for each copy at the Patent Office, Sale Branch, 38, Cursitor Street, London, E. C.

Copies will also be sent by post, on a prepaid application to that address, accompanied by a Post Office Order for the amount payable to H. Reader Lack, at the Chancery Lane Post Office, London, W.C.

2. In order to obtain registration application must be made to the Comptroller in pursuance of Rules Nos. 6—12.

APPLICATION.

3. Stamped Forms of Application to register have been ^{Where} issued, and can be obtained at the principal agencies in ^{Forms ob-} the United Kingdom, hereinafter mentioned. ^{tainable.}

List of Places at which Stamped Forms under the Patents, Designs, and Trade Marks Act, 1883, may be obtained.

(a.) At the Inland Revenue Office, Royal Courts of Justice.

(b.) At the following Post Offices :—

London General Post Office, E.C.

District Post Office, 226, Commercial Road, E.

„ 9, Blackman Street, Borough, S.E.

„ Charing Cross, W.C.

„ 28, Eversholt Street, Camden Town, N.W.

Post Office, 12, Parliament Street, S.W.

(c.) And at the chief Post Offices in the following towns :—

ENGLAND AND WALES.		
Accrington.	Clitheroe.	Knaresbro'.
Altrincham.	Congleton.	Knutsford.
Ashton-under-Lyne.	Coventry.	Lancaster.
Barnsley.	Crewe.	Leamington.
Barrow-in-Furness.	Darlaston.	Leeds.
Bedford.	Derby.	Leicester.
Beverley.	Dewsbury.	Lichfield.
Birkenhead.	Doncaster.	Lincoln.
Birmingham.	Dorchester.	Liverpool.
Blackburn.	Driffild.	Macclesfield.
Bolton.	Droitwich.	Manchester.
Bradford.	Dudley.	Middlesborough.
Brighton.	Durham.	Nantwich.
Bristol.	Exeter.	Newcastle.
Bromsgrove.	Gateshead.	Newport (Mon.).
Burnley.	Goole.	Northallerton.
Burslem.	Greenwich.	Northampton.
Burton-on-Trent.	Guildford.	Nottingham.
Bury.	Halifax.	Nuneaton.
Cambridge.	Hartlepool.	Oldbury.
Carlisle.	Huddersfield.	Oldham.
Chatham.	Hull.	Pattingham.
Chester.	Ipswich.	Plymouth.
	Keighley.	Pontefract.
	Kendal.	Portsmouth.
	Kidderminster.	Prescot.

Preston.	Sunderland.	Dumbarton.
Reading.	Swansea.	Dundee.
Redditch.	Tamworth.	Edinburgh.
Richmond (Yorks).	Truro.	Glasgow.
Ripon.	Tunstall.	Greenock.
Rochdale.	Wakefield.	Inverness.
Rotherham.	Walsall.	Lanark.
Rugby.	Warrington.	Paisley.
Salford.	Wednesbury.	Perth.
St. Helen's.	West Bromwich.	Renfrew.
Scarborough.	Whitby.	
Sedgley.	Widnes.	
Sheffield.	Wigan.	IRELAND.
Southampton.	Wolverhampton.	
Stafford.	Wolverton.	Belfast.
Stalybridge.	Woolwich.	Cork.
Stockport.	York.	Dublin.
Stoke-on-Trent.		Dundalk.
Stourbridge.	SCOTLAND.	Galway.
Stourport.	Aberdeen.	Wexford.

Applications sent by post should be addressed—

The Comptroller,
Patent Office,
Designs Branch.
25, Southampton Buildings,
London, W.C.

4. An application consists of the following :—

The appli-
cation.

- (1.) The form of application, Form E., properly filled up, and such evidence as will enable the Comptroller to identify the design.
 - (a.) If it is desired to secure a date of registration at once, one sketch of the design may be sent with the application form. In this case the design, if accepted, will be registered as of the date on which it was received ; but no certificate will be issued until three exact drawings or specimens have been sent in substitution for the sketch. Or,
 - (b.) The application may be complete in the first instance if applicant sends three exactly similar drawings, photographs, or specimens.

THE DRAWINGS OR PHOTOGRAPHS.

Drawings
and
sketches.

5. The drawings, &c. accompanying an Application must be sent in triplicate, each representation of each design upon strong foolscap paper (on one side only) of the size of 13 in. by 8 in.

6. When sketches, drawings, or tracings are furnished, they must be fixed. Drawings on tracing paper cannot be received. If tracings are supplied they must be done on tracing cloth or mounted on thick paper.

7. Rough sketches cannot be accepted.

8. When the design is to be applied to a set, each of the drawings accompanying the application, or the sketch, if a sketch is sent, should show the various arrangements in which it is proposed to apply the design to the articles included in the set.

Specimens.

9. When specimens of the design are furnished in lieu of drawings, &c., they must be of such a nature as can be pasted into books, and the dimensions of each such specimen must not exceed 12 in. by 21 in.

10. The representations of a design should not be accompanied by any lengthened explanatory statement.

Views of
same de-
sign.

11. Only two views of the same design can be accepted, unless in the case of a design for a set.

Marking
goods.

12. All goods to which registered designs are applied—Classes 1 to 12—should during the period of copyright bear the abbreviation “R^d.” and the number given on registration.

All goods to which registered designs are applied—Classes 13 and 14—should during the period of copyright bear the abbreviation “Reg^d.”

13. The following is a list of the stamped forms to be had at the places mentioned in paragraph 3 :—

List of
stamped
forms.

DESIGNS.

Letter.	Title or form.	Fee.
		£ s. d.
E	Application for Registration of Design in Classes 1 to 12	0 10 0
E	Application for Registration of Design in Classes 13 and 14 (woven and printed textiles)	0 1 0
F	Appeal to Board of Trade on Refusal of Comptroller to Register a Design	1 0 0
H	Application for Copy of Certificate of Registration of Design	0 1 0
I	Request for Certificate for use in Legal Proceedings	0 5 0
K	Request to enter Name of subsequent Proprietor of Design, with Declaration in support thereof :— In Classes 1 to 12	0 10 0
K	„ „ 13 and 14 (woven and printed textiles)	0 1 0
L	Notice of intended Exhibition of an Unregistered Design	0 5 0
M	Request for Correction of Clerical Error or Address	0 5 0
N	Request for Search under Section 53	0 5 0
O	Application to Register Design for “Set” of Articles.	1 0 0

N.B.—Forms E, classes 1 to 12, E, classes 13 and 14, and O, are kept on sale at the places named in paragraph 3. The other forms must be bespoken of the Postmasters at those places.

The Patent Office, Designs Branch, is open from 10 a.m. to 4 p.m.

H. READER LACK,
Comptroller.

Patent Office, Designs Branch,
London,
1st January, 1884.

SCHEDULES.

FIRST SCHEDULE.

FEES ⁽¹⁾.

	£	s.	d.
1. On application to register one design to be applied to single articles in each class except classes 13 and 14	0	10	0
2. On application to register one design to be applied to single articles in classes 13 and 14	0	1	0
3. On application to register one design to be applied to a set of articles for each class of registration	1	0	0
4. On notice of appeal to Board of Trade against refusal of Comptroller to register	1	0	0
5. Copy of certificate of registration, each copy	0	1	0
6. On request for Certificate of Comptroller for legal proceedings or other special purpose	0	5	0
7. On request to enter name of subsequent proprietor	<div> <div></div> <div>same as registration fee.</div> </div>		
8. On notice to Comptroller of intended exhibition of an unregistered design	0	5	0
9. Inspection of design of which the copyright has expired, for each quarter of an hour	0	1	0
10. Copy of one such design	<div> <div></div> <div>cost according to agreement</div> </div>		

⁽¹⁾ All fees are payable by stamped forms. See *Instructions, post.*

	£	s.	d.
11. On request to correct clerical error. .	0	5	0
12. On request for search under section 53 .	0	5	0
13. On request to enter new address . .	0	5	0
14. For office copy, every 100 words . .	0	0	4
	(but never less than 1s.)		

15. For certifying office copies, MS.S. or
printed 0 1 0

NOTE.—The term “set” to include any number of articles ordinarily on sale together irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

J. CHAMBERLAIN,
President of the Board of Trade.

Approved,

CHARLES C. COTES,

HERBERT J. GLADSTONE,

Lords Commissioners of Her Majesty's Treasury.

4th December, 1883.

SECOND SCHEDULE.

FORMS.

- (E) Form of Application to Register.
- (F) „ Appeal to Board of Trade.
- (G) „ Certificate of Registration.
- (H) „ Application for Copy of Certificate of Registration.
- (I) „ Request for Certificate for use in Legal Proceedings.
- (J) „ Certificate for use in Legal Proceedings.
- (K) ⁽¹⁾ „ Request to enter Name of Subsequent Proprietor.
- (L) „ Notice of intending Exhibition of Unregistered Design.
- (M) „ Request for Correction of Clerical Error or for entry of New Address.
- (N) ⁽²⁾ „ Request for Search under Sect. 53.
- (O) ⁽²⁾ „ Application to Register Design for Set of Articles.

⁽¹⁾ Two forms are kept, one for classes 1—12, for which fee is 10s., and the other for classes 13 and 14, for which the fee is 1s. See *Instructions* (*post*).

⁽²⁾ These were not in original list of Forms, but were issued with the *Instructions*, see *post*.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*E.*APPLICATION FOR REGISTRATION OF DESIGN IN
CLASSES . (1)

10s. or 1s.

DESIGNS.

You are hereby requested to register the accompanying
design in Class , in the name of (a)

(a) Here insert
legibly the name,
address, and de-
scription of the
individual or
firm.

of

who claims to be the proprietor thereof, and to return the
same to

Statement of nature of design (b)

(b) Such as
whether it is ap-
plicable for the
pattern or for
the shape.

(c) (c) To be signed
by the applicant.

(Signed)

Dated the day of 188 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chaucery Lane, London, W.C.

(1) See 3rd Schedule for Classes, and S. 47. One copy of this Form is stamped with 10s. for Classes 1—12: and a second copy with 1s. for Classes 13 and 14. See Form O for application to register a set of articles.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

F.

APPEAL TO BOARD OF TRADE ON REFUSAL OF
COMPTROLLER TO REGISTER A DESIGN ⁽¹⁾.

[To be accompanied by an unstamped copy.]

Sir,

I hereby appeal against your decision upon my application to register

(a) The statement of the case to be written upon foolscap paper (on one side only), with a margin of two inches on the left-hand side thereof.

and beg to submit my case (a) for the decision of the Board of Trade.

I am, Sir,

Your obedient Servant,

The Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See Rules, 16—20.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*G.*CERTIFICATE OF REGISTRATION OF DESIGN ⁽¹⁾.(R^d No. .)

Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

This is to certify that the Design of which this is a copy was registered this day of 188 , in pursuance of the Patents, Designs, and Trade Marks Act, 1883, in respect of the application of such Design to articles in Class , for which a copyright of five years is granted.

SEAL OF PATENT OFFICE.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

H.

APPLICATION FOR COPY OF CERTIFICATE OF REGISTRATION
OF DESIGN ⁽¹⁾.

1s.

DESIGNS.

Sir,

I hereby request you to furnish me with a Copy
Certificate of Registration of Design No. in Class .

(Signed)

Dated the day of 188 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See s. 49.

<p>58.</p> <p>DESIGNS.</p>

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*I.*REQUEST FOR CERTIFICATE FOR USE IN LEGAL PROCEEDINGS ⁽¹⁾.

SIR,

I hereby request you to send me for the purposes of

(a) Here state use in the suit of (a)
the title of the
legal proceeding
or the other pur-
pose for which
the Certificate is
required.

a certificate that the design of which a copy is herein

(b) Here state enclosed was (b)
the entry, mat-
ter, or thing,
which the writer
wishes certified.

(Signed)

day of 188 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See Designs Rules, 34.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

J.

CERTIFICATE FOR USE IN LEGAL PROCEEDINGS ⁽¹⁾.

In the matter of

No.

I, Comptroller-General of Patents,
Designs, and Trade Marks, hereby certify that

Witness my hand and seal this day of
188 .

Comptroller.

Patent Office, Designs Branch,
25, Southampton Buildings,
London.

SEAL.

⁽¹⁾ See Rule 34.

10s. or 1s.

DESIGNS.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

K.

REQUEST TO ENTER NAME OF SUBSEQUENT PROPRIETOR
OF DESIGN, WITH DECLARATION IN SUPPORT THEREOF⁽¹⁾.

(a) or We.
Here insert
name, full ad-
dress, and de-
scription.

I, (a)

(b) My or our.
(c) or Names.

hereby request that you will enter (b) name (c)
in the Register of Designs as proprietor of the Design
No. in Class .

(d) I am, or We
are.

(d)

entitled as to the said Design

(e) Here state
whether design
transmitted by
death, marriage,
bankruptcy, or
other operation
of law, and is
entitled by as-
signment state
the particulars
thereof as, e.g.,
"by deed dated
the — day of
— 188— made
between So-and-
so of the one
part."

(e)

(f) And I do solemnly and sincerely declare that the
above several statements are true, and the particulars
above set out comprise every material fact and document
affecting the proprietorship of the said Design as above
claimed.

(f) This para-
graph is not re-
quired when the
declaration is
made out of the
United King-
dom.

And I make this solemn declaration conscientiously
believing the same to be true, and by virtue of the pro-
visions of the Statutory Declarations Act, 1835.

(g) To be signed
here by the per-
son making the
declaration.

(g)

Declared at

this day of 188 .

Before me,

(h)

(h) Signature
and title of the
authority before
whom the decla-
ration is made.

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See S. 87 and Designs Rules 22—26. Two kinds of this form
are used. One for articles in classes 1—12, stamped with 10s. stamp,
and the other for classes 13 and 14, stamped with 1s. stamp.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*L.*NOTICE OF INTENDED EXHIBITION OF AN UNREGISTERED
DESIGN ⁽¹⁾.

58.

DESIGNS.

(a)

(a) Here state
name and ad-
dress of appli-
cant.

hereby give notice of my intention to exhibit a

of at the

Exhibition, which (b)

(b) State "open-
ed" or "is to
open."

of 188 , under the provisions of the

Patents, Designs, and Trade Marks Act of 1883 (c)

(c) Insert brief
description of
Design, with
drawing.

herewith enclose a

(Signed)

Dated the day of 188 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.⁽¹⁾ See S. 57.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

58.

DESIGNS.

M.

REQUEST FOR CORRECTION OF CLERICAL ERROR OR FOR
ENTRY OF NEW ADDRESS ⁽¹⁾.

SIR,

I hereby request that

(Signed)

Dated the day of 188 .

To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

⁽¹⁾ See S. 91.

THIRD SCHEDULE.

CLASSIFICATION OF ARTICLES OF MANUFACTURE AND
SUBSTANCES.

Classes.

1. Articles composed wholly or partly of metal, not included in Class 2.
2. Jewellery.
3. Articles composed wholly or partly of wood, bone, ivory, papier maché, or other solid substances not included in other classes.
4. " " glass, earthenware or porcelain, bricks, tiles, or cement.
5. " " paper (except hangings).
6. " " leather, including bookbinding, of all materials.
7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths, and oilcloths.
9. Lace, hosiery.
10. Millinery and wearing apparel, including boots and shoes.
11. Ornamental needlework on muslin or other textile fabrics.
12. Goods not included in other classes.
13. Printed or woven designs on textile piece goods.
14. " " handkerchiefs and shawls.

21st December 1883.

J. CHAMBERLAIN,
President of the Board of Trade.

RULES

FOR THE

REGISTRATION OF TRADE MARKS ; WITH CLASSIFICATION OF GOODS

AND

TABLE OF FEES.

TRADE MARKS RULES.

By virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following Rules :—

The section under which these Rules are made is S. 101.

PRELIMINARY.

1. These Rules may be cited as the Trade Marks Rules, 1883, and shall come into operation from and immediately after the 31st day of December, 1883.

This is the same date as the date of commencement of the Act. See S. 3.

INTERPRETATION.

Interpreta-
tion.

2. In the construction of these Rules any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively.

The general definitions of the Act will be found in S. 117.

FEES.

Fees.

3. The fees to be paid in pursuance of the said Act, so far as it relates to trade marks, shall be the fees specified in the First Schedule hereto.

For Forms for transmission of fees see Trade Marks Instructions.

FORMS.

4. The Form F in the First Schedule to the said Act, Forms. shall be altered or amended by the substitution therefor of the Form F in the Second Schedule to these Rules.

5. (1) An application for registration of a trade mark shall be made in the Form F in the Second Schedule to these Rules ; (2) The remaining forms in such Schedule may be used in all cases to which they are applicable.

CLASSIFICATION OF GOODS.

6. For the purposes of trade marks registration and of these Rules goods are classified in the manner appearing in the Third Schedule hereto. Classifica-
tion of
goods.

If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Comptroller.

See also the note at the head of the Third Schedule.

By S. 65, a trade mark must be registered for particular goods, or classes of goods.

APPLICATION FOR REGISTRATION.

7. An application for registration of a trade mark, if made by any firm or partnership, may be signed by some one or more members of such firm or partnership, as the case may be. Applica-
tion by
firm.

If the application be made by a body corporate it may be signed by the Secretary or other principal officer of such body corporate.

The signature should be as a "member of the firm," or "for the company." See Form F.

8. An application for registration and all other communications between the applicant and the Comptroller may be made (a) by or through an agent duly authorised (b) to the satisfaction of the Comptroller.

(a) Communications may also be made by post.

(b) The agent must be authorised in writing. See *Instructions*, 12, *post*.

Acknowledgment of application.

9. On receipt of the application the Comptroller shall furnish the applicant with an acknowledgment thereof.

Contents of form of application.

10. Where application is made to register a trade mark which was used by the applicant or his predecessors in business before the 13th of August, 1875, the application shall contain a statement of the time during which and of the person by whom it has been so used in respect of the goods mentioned in the application.

As to old trade marks see S. 64, Subs. (3).

As to classes 23-25 see *Instructions, post.*

Size, &c., of documents.

11. Subject to any other directions that may be given by the Comptroller, all applications, notices, counter-statements, representations of marks, papers having representations affixed, or other documents required by the said Act or by these Rules to be left with or sent to the Comptroller or to the Cutlers' Company, shall be upon foolscap paper of a size of 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

Qualification of metal goods.

12. In the case of an application for the registration of a trade mark used on any metal goods, other than cutlery, edge tools, and raw steel, the applicant shall state in the specification of goods in the form of application of what metal or metals the goods in respect to which he applies are made.

See classes 5 to 14 as to metal goods, and *Instructions, 14, post.*

Representation of trade mark.

13. Subject to any other directions that may be given by the Comptroller, three representations of each trade mark, except in the case of marks applied for in classes 23 to 35 (a) inclusive, must be supplied upon paper of the size aforesaid, and must be of a durable nature. One of such representations must be made upon or affixed to the form of application, the others upon separate half-sheets. In the case of trade marks exceeding the limits of the foolscap paper of the size aforesaid, such marks may be pasted and folded upon the sheets of foolscap.

In the case of marks applied for in classes 23 to 35

inclusive, the applicant shall supply four representations of each mark for each class (a).

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Comptroller may think most convenient.

The Comptroller may, if dissatisfied with the representation of a trade mark, require a fresh representation, either before he proceeds with the application or before he registers the trade mark.

The Comptroller may also, in exceptional cases, deposit in the Patent Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

(a) For Forms of representation see Forms F and G.

Classes 23 to 35 relate to cotton, linen, hemp, jute, silk, wool, and similar goods.

For additional fee (2s. for each additional inch), where trade mark requires more than 2 inches of the Trade Marks Journal, see First Schedule.

14. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 66 of the said Act, a representation of each trade mark of the series shall be made or affixed upon the form of application and also upon each of the separate half-sheets of paper aforesaid.

See note to S. 66, and *Instructions*, 18, *post*.

15. Wherever a mark consists of or includes words printed in other than Roman character, there shall be given at the foot or on the back of each representation a translation of such words, signed by the applicant or his agent.

This Rule relates to marks that would be called "fancy words." See note to S. 64, Subs. (C).

16. Any application, statement, notice, or other document authorised or required to be left, made, or given at the Patent Office, or to the Comptroller, or to

any other person under these Rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

This Rule forms S. 97 of the Act.

EXERCISE OF DISCRETIONARY POWERS.

Hearing by
Comptroller.

17. Before exercising any discretionary power given to the Comptroller by the said Act adversely to the applicant for registration of a trade mark, the Comptroller shall give him ten days' notice of the time when he may be heard personally or by his agent before the Comptroller.

See S. 94.

Notice of
wish to be
heard be-
fore Comptroller.

18. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter.

If such notice be not received, the applicant will be made aware of it on receiving notice of Comptroller's decision.

Notifica-
tion of de-
cision.

19. The decision of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant.

As to definition of applicant, see Rule 40.

APPEAL TO THE BOARD OF TRADE.

Appeal to
Board of
Trade.

20. Where the Comptroller refuses to register a trade mark, and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Trade Marks Branch, a notice of such his intention.

As to appeal see S. 62, Subs. (4), (5).

For Form of Appeal see Form K.

21. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof. Statement of grounds of appeal.

22. The applicant shall forthwith on leaving such notice send a copy thereof to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London. Copy of notice to Board of Trade.

23. The Board of Trade may thereupon give such directions (if any) as they may think fit with respect to evidence, or otherwise, for the purpose of the hearing of the appeal by the Board of Trade, or for the purpose of their referring the appeal to the Court to hear and determine the same. Directions by Board.

24. Where the Board of Trade intend to hear the appeal, seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing, shall be given to the Comptroller and the applicant. Notice of time of hearing.

ADVERTISEMENT OF APPLICATION.

25. Every application shall be advertised by the Comptroller in the official paper, during such times, and in such manner as the Comptroller may direct. Advertisement of application.

If no representation of the trade mark be inserted in the official paper in connexion with the advertisement of an application, the Comptroller shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition.

See S. 68.

26. The official paper for the purposes of these Rules shall be some paper published under the direction of the Board of Trade, or such other paper as such Board may from time to time direct. Definition of official paper.

The official paper is *The Trade Marks Journal*.

27. For the purposes of such advertisement the applicant may be required to furnish a wood block or electro-type (or more than one, if necessary) of the trade mark, Means of advertising trade mark to be sup-

plied to
official
paper.

of such dimensions as may from time to time be directed by the Comptroller, or with such other information or means of advertising the trade mark as may be required by the Comptroller; and the Comptroller, if dissatisfied with the block or electrotpe furnished by the applicant or his agent, may require a fresh block or electrotpe before proceeding with the advertisement

See Instructions, 21-28, post, as to blocks and electrotpes.

Advertise-
ment of
series.

28. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 66 of the said Act, the applicant may be required to furnish a wood block or electrotpe (or more than one, if necessary) of any or of each of the trade marks constituting the series; and the Comptroller may, if he thinks fit, insert with the advertisement of the application a statement of the manner in respect of which the several trade marks differ one from another

It is published once a week, and copies may be seen at the Patent Office Library, Southampton Buildings, Chancery Lane, and the Patent Museum, South Kensington.

OPPOSITION TO REGISTRATION.

Manner of
bringing
case before
Court.

29. (1.) Where a case stands for the determination of the Court, under the provisions of section 69 of the said Act, the Comptroller shall require the applicant within one month, or such further time as the Comptroller may allow, to issue a summons in the chambers of a judge of Her Majesty's High Court of Justice for an order that notwithstanding the opposition of which notice has been given the registration of the trade mark be proceeded with by the Comptroller, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court.

(2.) The applicant shall thereupon issue such summons, or take such other proceedings as aforesaid, within the period of one month above named, or such further time as the Comptroller may allow, and shall also within the like period give notice thereof to the Comptroller.

(3.) If the applicant shall fail to issue such summons or to take such other proceedings, of which failure the non-receipt by the Comptroller of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

(4.) Such notice to the Comptroller shall be given by delivering at or sending to the Patent Office a copy of the summons or other initiatory proceeding bearing an endorsement of service signed by the applicant or his solicitor, or an endorsement of acceptance of service signed by the opponent or his solicitor.

Mode of giving notice that the matter has been brought before the Court.

For Form of opposition see Form J.

REGISTER OF TRADE MARKS.

30. As soon as may be after the expiration of two months from the date of the first advertisement of the application, the Comptroller shall, subject to any such summons or other proceeding as aforesaid and the determination of the Court thereon if he is satisfied that the applicant is entitled to registration, and on payment of the prescribed fee, enter the name, address, and description of the applicant in the Register of Trade Marks as the registered proprietor of the trade mark in respect of the particular goods or classes of goods described in his application.

Time of registration of trade marks.

See S. 78.

As to fees see First Schedule.

31. In case of the death of any applicant for a trade mark after the date of his application, and before the trade mark applied for has been entered on the register, the Comptroller, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the name of such deceased applicant, the name, address, and description of the person owning the goodwill of the business, if such ownership be proved to the satisfaction of the Comptroller.

Where applicant dies before registration, the trade mark may be registered for successor to good-will of business.

This rule is new. See Form K.

Entries to be made in register. 32. Upon registering any trade mark the Comptroller shall enter in the register the date on which the application for registration was received by the Comptroller (which day shall be deemed to be the date of the registration) and such other particulars as he may think necessary.

Notice of registration. 33. The Comptroller shall send notice to the applicant of the registration of his trade mark, together with a reference to the advertisement of such trade mark in the official paper.

Request by subsequent proprietor. 34. Where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, a request for the entry of his name in the register as proprietor of the trade mark shall be addressed to the Comptroller, and left at the Patent Office.

As to connection of trade mark with goodwill see S. 70.

As to fees payable see First Schedule.

Signature of request. 35. Such request shall in the case of an individual be made and signed by the person requiring to be registered as proprietor, and in the case of a firm or partnership by some one or more members of such firm or partnership, or in either case by his or their agent respectively duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate by their agent, authorised in like manner.

For Form of request see Form K.

Contents of request. 36. Every such request shall state the name, address, and description of the person claiming to be entitled to the trade mark (hereinafter called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connexion with the goodwill of the business concerned

in the particular goods or classes of goods for which the trade mark has been registered.

Marriage of a female proprietor no longer acts as a transmission of the trade mark. See Married Women's Property Act, 1882.

In case of Death, particulars should be given of the Will or Letters of Administration.

In the case of Bankruptcy, particulars should be given of the certificate of appointment of the trustee since such certificate operates as an assignment. Bankruptcy Act, 1883, S. 55 (4).

As to goodwill on dissolution or termination of partnership see Lindley, II. 859, and S. 138.

37. Every such request shall be accompanied by a Declaration statutory declaration to be thereunder written, verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade mark as claimed by such request. to accompany request.

For Form of declaration see Form K, and as to the declaration see Rule 58.

38. The claimant shall furnish to the Comptroller such other proof of title and of the existence and ownership of such goodwill as aforesaid as he may require for his satisfaction. Further proof of title if required.

39. A body corporate may be registered as proprietor by its corporate name. Body corporate.

40. The term "applicant" in Rules 17, 18, and 19 shall include each of several persons claiming to be registered as proprietor of the same trade mark. Definition of applicant.

41. Whether all of such persons so claiming require to be heard before the Comptroller or not, he may, before exercising the discretion vested in him, by section 71 of the said Act, require such persons, or any or either of them, to submit a statement in writing within a time to be notified by him, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require. Comptroller may require statement from rival claimants.

42. Where each of several persons claims to be registered as proprietor of the same trade mark, and the Submission to Court of conflicting claims.

Comptroller refuses to register any of them until their rights have been determined according to law, the manner in which the rights of such claimants may be submitted to the Court by the Comptroller or if the Comptroller so require, by the claimants, shall, unless the Court otherwise order, be by a special case; and such special case shall be filed and proceeded with in like manner as any other special case submitted to the Court, or in such other manner as the Court may direct.

See S. 71.

Settlement
of special
case.

43. Where the special case is to be submitted to the parties it may be agreed to by them, or if they differ, may be settled by the Comptroller on payment of the prescribed fees.

The fees for settling the special case is 2*l*. See First Schedule.
For Form of Request, see Form 80.

44. Where an order has been made by the Court in either of the following cases, viz. :—

- (a) allowing an appeal under section 62 of the said Act;
- (b) disallowing an opposition to registration under section 69; or,
- (c) under the provisions of sections 72, 90, or 92 of the said Act,

the person in whose favour such order has been made, or such one of them, if more than one, as the Comptroller may direct, shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or altered, or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Removal of
mark from
register.

45. Where a trade mark has been removed from the register for nonpayment of the prescribed fee or otherwise, under the provisions of section 79 of the said Act, the Comptroller shall cause to be entered in the register a record of such removal and the cause thereof.

For Forms of Application and declaration to cancel a mark, see Forms O and P. See also S. 91.

46. If the registered proprietor of a trade mark send to the Comptroller, together with the prescribed fee, notice of an alteration in his address, the Comptroller shall alter the register accordingly.

Alteration
of address
in register.

For Form of Notice, see Form M.

The fee payable is 5s., see First Schedule.

47. Whenever an order is made by the Court for making, expunging, or varying an entry from or in the register, the Comptroller shall, if he thinks that such rectification or variation should be made public, and at the expense of the person applying for the same, publish, by advertisement or otherwise, and in such manner as he thinks just, the circumstances attending the rectification or variation in the register.

Publication
of rectifica-
tion or
variation of
register.

For Notice of Alteration, see Form N.

48. Whenever the registered proprietor of any trade mark intends to apply for the leave of the Court to add to or to alter such trade mark, under section 92 of the said Act, the notice to be given to the Comptroller shall be given fourteen days at least before such application. If leave be granted on such application the applicant shall forthwith supply to the Comptroller such a number of representations of the trade mark as altered as he may deem sufficient.

Notice to
Comptroller of
Order of
Court for
alteration
of trade
mark under
section 92
of Act.

The fee payable on rectification of the Register is 10s. See First Schedule.

INSPECTION OF REGISTER.

49. The Register of Trade Marks shall be open to the inspection of the public, on payment of the prescribed fee, on every weekday between the hours of ten and four, except on the days and at the times following :—

Hours of
inspection.

(a.) Christmas Day, Good Friday, the day observed as Her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England ; or

(b.) Days which may from time to time be notified by

a placard posted in a conspicuous place at the Patent Office ;

(c.) Times when the register is required for any purpose of official use.

The fee for searching register, or the classified representations of Trade Marks is 1s. for every quarter of an hour, see First Schedule.

POWER TO DISPENSE WITH EVIDENCE.

Dispensing
with evi-
dence.

50. Where under these Rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

See also S. 99.

AMENDMENTS.

Amend-
ment of
documents.

51. Any document or drawing or other representation of a trade mark for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which in the opinion of the Comptroller may be obviated without detriment to the interests of any person may be corrected, if the Comptroller think fit, and on such terms as he may direct.

ENLARGEMENT OF TIME.

Comp-
troller may
enlarge
time.

52. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Comptroller, if he think fit, and upon such notice

to other parties, and proceedings thereon, and upon such terms, as he may direct.

CUTLERS' COMPANY.

53. All applications to the Cutlers' Company for registration of a trade mark, under section 81 of the said Act, shall be in duplicate, accompanied by the prescribed fees and representations. Sheffield applications in duplicate.

The fees are the same as for other marks. See First Schedule.

54. The Cutlers' Company shall, within seven days of the receipt by them of an application to register a trade mark, send the Comptroller one copy of such application, by way of notice thereof, together with two representations of the mark for each class for which the applicant seeks registration. Notice to Comptroller.

55. (1.) The time within which the Comptroller shall give notice to the Cutlers' Company of any objection he may have to the acceptance of an application for registration made to the said Company shall be one month from the date of the receipt by the Comptroller of the notice from the said Company of the making of the application. Time within which Comptroller may object to application made at Sheffield.

See S. 81, Subs. (4) (5).

(2.) If no such objection is made by the Comptroller, the Cutlers' Company shall require the applicant to send the Comptroller a wood block or electrotpe as the Comptroller may direct, and the Comptroller shall if satisfied with such wood block or electrotpe, advertise the application in the same manner as an application made to him at the Patent Office. Advertisement of application made at Sheffield.

(3.) The manner in which the Comptroller shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in subsection 8 of section 81 of the said Act shall be by sending to the Cutlers' Company a copy of the official paper containing the application of which notice is required to be given, with a note distinguishing such application. Manner of notifying to Cutlers' Company application received by Comptroller.

Similarity
of proceed-
ings at
London
and at
Sheffield.

56. The provisions of these Rules as to forms, representations, the proceedings on opposition to registration, registration, and all subsequent proceedings shall, as far as the circumstances allow, apply to all applications to register made to the Cutlers' Company, and to all proceedings consequent thereon.

For Form of Appeal from Cutlers' Company at Sheffield see Form W.

CERTIFICATES.

Certificate
by Comp-
troller.

57. The Comptroller, when required for the purpose of any legal proceeding or other special purpose to give a certificate as to any entry, matter, or thing which he is authorised by the said Act or any of these Rules to make or do, may, on receipt of a request in writing, and on payment of the prescribed fee, give such certificate, and shall specify on the face of it the legal proceeding or other purpose for which such certificate is granted.

For Form of general certificate see Form U.

For Form for use in legal proceedings see Form S.

The fee for certificate for use in legal proceedings is 10s. See First Schedule.

As to certificates see *Instructions*, 39, *post*.

DECLARATIONS.

Manner in
which, and
persons be-
fore whom,
declaration
is to be
taken.

58. The statutory declarations required by the said Act and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows :—

(a.) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding ;

(b.) In any other part of Her Majesty's dominions, before any court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding ;
and

- (c) If made out of Her Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a notary public, or before a judge or magistrate.

59. Any document purporting to have affixed, im-
pressed, or subscribed thereto or thereon the seal or sig-
nature of any person hereby authorised to take such
declaration in testimony of such declaration having been
made and subscribed before him, may be admitted by the
Comptroller without proof of the genuineness of any such
seal or signature, or of the official character of such person
or his authority to take such declaration.

Notice of
seal of offi-
cer taking
declaration
to prove
itself.

REPEAL.

60. All general rules as to the registration of trade
marks heretofore made by the Lord Chancellor under the
Trade Marks Registration Act, 1875, and in force on the
31st day of December 1883, shall be, and they are hereby
repealed, as from that date, without prejudice, nevertheless,
to any proceeding which may have been taken under
such Rules.

Previous
rules re-
pealed.

See S. 113.

J. CHAMBERLAIN,

President of the Board of Trade.

21st December, 1883.

INSTRUCTIONS TO PERSONS

WHO WISH TO

REGISTER TRADE MARKS.

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1. All communications relating to Trade Marks, not being Sheffield marks, should be addressed to the Comptroller, Patent Office, Trade Marks Branch. All applications should be in the English language.

They may be made by post, or left at the Patent Office, Trade Marks Branch, 25, Southampton Buildings, Chancery Lane, London, W.C.

2. The fees in relation to Trade Marks Registration cannot be received at the Patent Office. They should be paid in exchange for the stamped forms required, which may be obtained at the following places :—

List of Places at which Stamped Forms under the Patents, Designs, and Trade Marks Act, 1883, may be obtained.

(a.)—At the Inland Revenue Office, Royal Courts of Justice, London.

(b.) At the following Post Offices in London :—

The General Post Office, London, E.C.

District Post Office, 226, Commercial Road, E.

„ 9, Blackman Street, Borough,
S.E.

„ Charing Cross, W.C.

„ 28, Eversholt Street, Camden
Town, N.W.

Post Office, 12, Parliament Street, S.W.

(c.) At the Chief Post Office of—

ENGLAND AND WALES.		
Accrington.	Durham.	Pontefract.
Altrincham.	Exeter.	Portsmouth.
Ashton-under-Lyne.	Gateshead.	Prescot.
Barnsley.	Goole.	Preston.
Barrow-in-Furness.	Greenwich.	Reading.
Bedford.	Guildford.	Redditch.
Beverley.	Halifax.	Richmond (Yorks.).
Birkenhead.	Hartlepool.	Ripon.
Birmingham.	Huddersfield.	Rochdale.
Blackburn.	Hull.	Rotherham.
Bolton.	Ipswich.	Rugby.
Bradford.	Keighley.	Salford.
Brighton.	Kendal.	St. Helen's.
Bristol.	Kidderminster.	Scarborough.
Bromsgrove.	Knaresbro'.	Sedgley.
Burnley.	Knutsford.	Sheffield.
Burslem.	Lancaster.	Southampton.
Burton-on-Trent.	Leamington.	Stafford.
Bury.	Leeds.	Stalybridge.
Cambridge.	Leicester.	Stockport.
Carlisle.	Lichfield.	Stoke-on-Trent.
Chatham.	Lincoln.	Stourbridge.
Chester.	Liverpool.	Stourport.
Clitheroe.	Macclesfield.	Sunderland.
Congleton.	Manchester.	Swansea.
Coventry.	Middlesborough.	Tamworth.
Crewe.	Nantwich.	Truro.
Darlaston.	Newcastle.	Tunstall.
Derby.	Newport (Mon.)	Wakefield.
Dewsbury.	Northallerton.	Walsall.
Doncaster.	Northampton.	Warrington.
Dorchester.	Nottingham.	Wednesbury.
Driffield.	Nuneaton.	West Bromwich.
Droitwich.	Oldbury.	Witby.
Dudley.	Oldham.	Widnes.
	Patrinton.	Wigan.
	Plymouth.	Wolverhampton.

INSTRUCTIONS AS TO TRADE MARKS.

Wolverton.	Edinburgh.	IRELAND.
Woolwich.	Glasgow.	
York.	Greenock.	Belfast.
	Inverness.	Cork.
SCOTLAND.	Lanark.	Dublin.
Aberdeen.	Paisley.	Dundalk.
Dumbarton.	Perth.	Galway.
Dundee.	Renfrew.	Wexford.

3. The following is a list of the stamped forms under the Patents, Designs, and Trade Marks Act, 1883, which relate to Trade Marks, and which may be obtained at the places mentioned above —

TRADE MARKS.

Letter.	Title of Form.	Fee.
		£ s. d.
F	Application for Registration of Trade Mark .	0 5 0
G	Additional Representation Form	No stamp.
H {	Appeal to Board of Trade on Refusal of Comptroller to Register a Trade Mark	1 0 0
I	Registration Fee	1 0 0
J {	Notice of Opposition to Application for Registration	1 0 0
K {	Request to enter Name of subsequent Proprietor, with Declaration in support thereof	1 0 0
L {	Request for Certificate of Refusal to Register a Trade Mark	1 0 0
M	Notice of Application for Alteration of Address	0 5 0
N {	Notice of Application for Alteration or Rectification of Register	0 10 0
O	Application to Cancel Entry of Mark on Register	0 5 0
Q	Request for Correction of Clerical Error	0 5 0
R {	Request for Certificate of Registration for use Abroad	0 5 0
S {	Request for Certificate of Registration for use in Legal Proceedings	0 10 0
T	Application for Settlement of a Special Case	2 0 0
T 1	Request for General Certificate of Comptroller (a)	0 5 0
V	Request for Copy of Official Notification	0 2 0
W {	Appeal from Cutlers Company at Sheffield to Comptroller	1 0 0

Of the above Forms those bearing the letters “F,” “G,” and “I” are kept in stock at the various offices named in paragraph 2. Any of the others when required must be bespoken.

(a) This Form was not in the original list of Forms. A copy of it will be found amongst the Trade Marks Forms, *supra*.

SALE OF OFFICIAL PUBLICATIONS.

4. The Patents, Designs, and Trade Marks Act, 1883, and the Rules thereunder in relation to the registration of Trade Marks should be carefully studied. Copies of the Act and the Trade Marks Rules can be had on payment of 2s. 2d., for each copy, of 38, Cursitor Street, Chancery Lane, London, E.C.

Post Office Orders, sent in payment for the Act and Rules, should be for the sum of 2s. 2d., made payable to H. Reader Lack, at the Chancery Lane Post Office.

5. The Act and the Trade Marks Rules may also be obtained for the above sum from any of the following publishers :—

Knight and Co., 90, Fleet Street ;
Stevens and Sons, 119, Chancery Lane ;
E. Stanford, 55, Charing Cross ;
Shaw and Sons, Fetter Lane ;
Butterworths, 7, Fleet Street ;
G. Downing, 8, Quality Court, Chancery Lane ;
Trübner and Co., 57 and 59, Ludgate Hill ;
Waterlow and Sons, Limited, 25, 26, and 27,
Great Winchester Street ; 95 and 96, London
Wall ; Finsbury Stationery Works ; and 49,
Parliament Street ;
J. M. Johnson and Sons, Limited, 1, Castle
Street, Holborn ;
Waterlow Bros. and Layton, 23, 24, and 25,
Birchin Lane ; and 28, 29, and 30, Lime
Street ;
Palmer and Howe, 73, 75, and 77, Princess
Street, Manchester ;
A. Thom & Co., 87 and 88, Abbey Street,
Dublin ;
A. and C. Black, Edinburgh.

Copies will also be sent by post by any of the above publishers on a prepaid application, containing the name and address of the sender, and accompanied by a Post Office order for the amount due in respect of the copies

required, together with $1\frac{1}{2}d$ postage for each copy of the Act and the Rules.

6. Copies of the *Trade Marks Journal* may be obtained from any of the publishers named in para. 5. Price 1s. a number.

DEFINITION OF A TRADE MARK.

7. The definition of a Trade Mark (not used prior to the 13th August, 1875) is given in the 64th section of the Patents, Designs, and Trade Marks Act, 1883, as follows :—

“For the purposes of this Act, a Trade Mark must consist of or contain at least one of the following essential particulars :

“A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner ; or

“A written signature or copy of a written signature of the individual or firm applying for registration thereof as a Trade Mark ; or

“A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.”

All new Marks, therefore, which it is desired to register *must include one or more of the above essential particulars.*

The 64th section goes on—“There may be added to any one or more of these particulars any letters words or figures, or combination of letters words or figures, or any of them.”

In addition to the above—

“Any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a Trade Mark before the thirteenth day of August one thousand eight hundred and seventy-five may be registered as a Trade Mark under this part of this Act.”

A person wishing to adopt a Trade Mark should, before engraving a block and circulating impressions of the Mark among his customers, make a search or a formal application at the Trade Marks Branch of the Patent Office with the view of ascertaining whether his proposed Mark is already registered, or whether, from its being calculated to deceive by a resemblance to other Marks already on record, it would be refused registration under the 72nd section of the Patents, Designs, and Trade Marks Act, 1883.

The fee for making a search amongst the classified representations of Trade Marks is 1s. for each quarter of an hour. The fee for a formal Application is 5s.

The Comptroller does not undertake to make searches amongst the Trade Marks recorded at his Office, except in connexion with formal applications for registration.

APPLICATIONS FOR REGISTRATION.

8. Applications sent by post should be addressed to—

The Comptroller,
Patent Office,
Trade Marks Branch,
25, Southampton Buildings,
London, W.C.

Agents and other persons who may be interested in more than one Application are particularly requested to make communications relating to different Applications in *separate* letters.

9. An application for the registration of a Trade Mark consists of :—

(a.) An Application Form (Form “F” in the Second Schedule to the Trade Marks Rules, 1883), giving certain particulars (specified in the form), and bearing an impressed stamp of 5s.

(The Applicant should before filling up the form carefully read the marginal notes.)

(b.) Certain additional representations of the Trade Mark, mounted on forms (Form "G").

10. A *separate* Application Form is required for *each* class.

11. If the Mark be the property of a firm, it should be signed by a member of the firm, who should add after his signature "A Member of the Firm" ; if of a Company, by the Secretary or other principal officer, who should add after his signature and designation, "For the Company" (a).

12. Applications may be made by Agents in the names of and on behalf of the owners of Trade Marks. The Agent must be duly authorised by the owner or owners ; the necessary authority should be signed by the owner or owners.

Applications made by Agents should have after the name of the Agent the description "Agent" (b).

13. A representation of the Trade Mark should be placed in the centre of the Application Form.

14. When an application is made for a Trade Mark used on any metal goods other than cutlery, edge tools, and raw steel, it should be stated in the Application Form of what metal or metals the goods are made. See section 81 of the Act as to Sheffield marks (c).

15. When the Mark consists of or includes words printed in other than Roman characters, there should be given at the back of or at the foot of the Application Form and of each of the additional representations a translation of such words, signed by the Applicant or his Agent (d).

In the case of Marks claimed in Classes 23, 24, or 25 (e), the Applicant should state by what name the particular mark claimed would be referred to in the invoices of his house.

(a) See Rule 7.

(b) See Rule 8.

(c) See Rule 12.

(d) See Rule 15.

(e) *e.g.*, clauses relating to cotton goods.

Additional Representations of Mark.

16. Each of the additional representations should be placed in the centre of a separate form (Form "G.").

In the case of a Trade Mark which is not claimed in Classes 23 to 35, *two* Additional Representations are required for *each* class claimed.

In the case of a Trade Mark claimed in any one or more of the Classes 23 to 35, *three* Additional Representations should be sent for *each* of such classes.

The representations of the Mark on the Form "G." must agree *in every respect* with each other, and with that on the Form "F."

17. Representations of a Mark of a large size may be folded. In that case they must, however, be backed with linen and firmly affixed to the forms. Representations must in no case be executed *in pencil*. They should be not only of a durable nature, but of such a kind as will admit of their being preserved and bound together in volumes as records of the property of the owners.

SERIES OF TRADE MARKS.

18. By Section 66 of the Patents, Designs, and Trade Marks Act, 1883, the Comptroller is empowered to register under one registration a series of Trade Marks which, whilst they resemble each other in the material particulars, differ from each other in respect of the statements of the goods for which they are used, of the statements of numbers, of the statements of price, of the statements of quality, or of the statements of names of places. When an application is made for such a series, a representation of each of the marks included in the series must be affixed to the Form "F.," and also to each of the Forms "G."

COMMON OR OPEN MARKS.

19. In the case of a Trade Mark used before the 13th August, 1875, Common or Open Marks of any kind may be registered in connexion with it, but in the case of a

Trade Mark not so used, Common or Open Marks consisting of *a word or combination of words only* can be registered as a part of the Mark.

In each case, the Applicant for entry of such common particular or particulars must disclaim the right to the exclusive use of the same in a note at the back of or at the foot of the Application Form and of each of the additional representations, such note to be signed by the Applicant or his Agent.

See Section 74 of the Act, sub-section 3, for definition of Common Marks.

CLASSIFICATION OF GOODS.

20. A Guide to the Classification of Goods under the Trade Marks Rules, 1883, can be obtained on application at the Patent Office, Trade Marks Branch, and should be asked for if the Applicant feels any difficulty in determining to which of the Classes set out in the Third Schedule to the Rules the goods for which he uses his Mark belong.

ADVERTISEMENT IN THE TRADE MARKS JOURNAL.

21. A Trade Mark cannot in any case be entered upon the Register until two months after its advertisement in the Official Paper (a).

22. A Wood-block or Electrotpe must be furnished for each Mark in each Class claimed (except in the case of Classes 23, 24, and 25, for which no Blocks or Electrotypes are required), but no Block or Electrotpe should be forwarded until a formal demand for it is sent by the Comptroller (b).

23. In the case of a series of Trade Marks differing only in respect of the particulars mentioned in Section 66 of the Patents, Designs, and Trade Marks Act, 1883, a Wood-block or Electrotpe must be furnished for each Mark in the series for each class claimed (b).

(a) See Rule 30.

(b) See Rules 27, 28.

24. The Wood-blocks or Electrotypes furnished must correspond *exactly* with the Representations, must afford *perfectly distinct* impressions of the Marks, and must be upon a scale sufficiently large to reproduce the Marks faithfully. Worn or mutilated Blocks or Electrotypes cannot be accepted.

25. The largest space available for the insertion of any single Block or Electrotype is eight and a half inches broad by ten inches deep.

When a Block or Electrotype *exceeds two inches in depth*, a charge for additional space is made, at the rate of two shillings for every inch or part of an inch beyond the two inches.

26. The Number given by the Comptroller should *not* be cut on the face of the Block or Electrotype, but should be *marked upon the side* in such a manner as to secure its identification.

27. All Blocks or Electrotypes should be sent to the Patent Office, Trade Marks Branch, together with the papers marked "Form 2," and with the representation of the Mark sent for the guidance of the Applicant in preparing the Blocks or Electrotypes.

28. The Blocks or Electrotypes supplied for the advertisement of Trade Marks cannot in any case be returned to Applicants.

RESTRICTIONS ON REGISTRATION.

29. Ornamental or coloured groundwork, such as tartans or checks, cannot be claimed as part of a Mark unless such groundwork be included within the Mark by some border or lines (a).

30. The Royal Arms, or arms so nearly resembling them as to be calculated to deceive, and the words "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery,"

(a) See s. 67.

“Patent,” “Patented,” will not be registered under the Patents, Designs, and Trade Marks Act, 1883, and should not, therefore, appear upon the Representations of Trade Marks forming part of an application.

31. The following will not be registered as Trade Marks, or as prominent parts of Trade Marks, unless the Marks have been used before 13th August, 1875 :—

Representations of Her Majesty the Queen, or of any member of the Royal family.

Representations of the Royal Crown.

National Arms or Flags.

Prize or Exhibition Medals.

32. When there appears on the face of a Trade Mark an indication of the goods to which the Mark is applied, the claim for its registration must be in respect of those goods only.

FORMS OF COUNTER-STATEMENT AND BOND (a).

33. The following is a form of Counter-statement :—

Patents, Designs, and Trade Marks Act, 1883.

Trade Marks.

In the Matter of an Application No.

and of the Opposition thereto No.

In reply to the Notice of Opposition in this matter by
of , I give notice by way of Counter-statement that I rely for my Application on the following grounds :—

(To be dated and signed by the Applicant or his Solicitor.)

To the Comptroller,
Patent Office,
Trade Marks Branch,
25, Southampton Buildings,
London.

(a) See s. '69.

The following is a Form of Bond which the Comptroller is able to accept from persons opposing Applications, and who have been required to give security for costs :—(a)

Patents, Designs, and Trade Marks Act, 1883.

Trade Marks.

In the Matter of an Application No.

and of the Opposition thereto No.

Know all men by these presents that we of
and of are jointly and severally held
and firmly bound to Henry Reader Lack the Comptroller-
General of Patents Designs and Trade Marks in the penal
sum of pounds of good and lawful money of Great
Britain to be paid to the said Henry Reader Lack or to other
the Comptroller-General of Patents Designs and Trade
Marks for the time being for which payment to be well and
faithfully made we bind ourselves and each of us our and
each of our heirs executors and administrators firmly by
these presents sealed with our Seals.

Dated this day of 18 .

Whereas pursuant to the provisions of the Patents
Designs and Trade Marks Act 1883 and of the Trade
Marks Rules 1883 an application (No.) has been made
by of to the Comptroller-General of
Patents Designs and Trade Marks for the registration of
a certain Trade Mark. And whereas the above-bounden
 have delivered a notice of oppo-
sition to such registration and the said
have sent to the said Comptroller-General a counter-
statement of the grounds on which they rely for their
application And whereas the said Comptroller-General
pursuant to the terms of the said Act hath required the
said to enter
into the above-written obligation (subject to the condition
herein-after contained) as security for such costs as may
be awarded in respect of such opposition.

(a) See s. 69.

Now the condition of the above-written obligation is such that if the said _____ or either of them their or either of their heirs executors or administrators do and shall well and truly pay or cause to be paid to all such costs as the High Court of Justice shall think fit to award to the said _____ in respect of the said opposition then the above-written obligation is to be void or else to remain in full force and virtue.

Signed sealed and delivered by the above-
bounden and
in the presence of .

34. Before he is required to bring an opposition matter before the Court under Rule 29, the Applicant is afforded an opportunity of objecting, if he think fit, to the solvency of the security for the costs which may be awarded in respect of the opposition.

Fees.

35. See the First Schedule to the Trade Mark Rules, 1883, and the List of Forms, para. 3, of these Instructions.

36. An Application for the Registration of a Trade Mark will not be entered by the Comptroller unless it be accompanied by the proper fees in impressed stamps.

CUTLERS COMPANY.

37. By section 81, sub-section 3 of the Patents, Designs, and Trade Marks Act, 1883, application for the registration of Trade Marks used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers Company.

See Rules 53 to 56 and para. 14 of these Instructions.

Applications made to the Cutlers Company in pursuance of section 81 of the Patents, Designs, and Trade

Marks Act, 1883, should be made on Form "F," the address in the left-hand corner to be, "To the Cutlers Company, Sheffield," instead of "To the Comptroller," and should be left at, or sent by post to, the Cutlers Hall, Sheffield.

Each application should be accompanied by an unstamped copy on foolscap paper. See Rule 53.

Applications sent by post should be addressed—

CHAS. MACRO WILSON, Esq.,
The Law Clerk,
The Cutlers Hall,
Sheffield.

MANCHESTER OFFICE.

38. For the convenience of merchants and manufacturers engaged in the Cotton Trade, and for the purpose of facilitating the recording of Trade Marks used in respect of Cotton Goods, an office will be opened at 48, Royal Exchange, Manchester, where searches can be made on payment of 1s. for each quarter of an hour for all Marks in classes of Textiles from Class 23 to Class 35.

CERTIFICATES.

39. The Comptroller's Certificate (a) in relation to a Trade Mark is of four kinds, viz.—

- (i.) For use in legal proceedings.
- (ii.) For use in applying for registration in Foreign Countries.
- (iii.) Of any application made and proceedings thereon.
- (iv.) A certificate of refusal of a Mark in use before 13th August, 1875, and not registerable.

40. A person desirous of obtaining any of the above Certificates should forward Form "R," Form "S," Form

(a) See s. 96.

"T," (a) or Form "L" (see para. 3), as the case may be, to the Comptroller, giving the Comptroller's official number of the Mark, and stating whether the Certificate is required for use in legal proceedings, or for use in applying for the registration of the Mark in a Foreign Country, or for what other purpose.

The form should be accompanied by two unmounted copies of each Mark for which a Certificate is required.

41. In every case where a Certificate is required in respect of a Cotton Mark, or in respect of any Trade Mark of which the representations or specimens forming part of the application for registration are *coloured*, two unmounted copies of the Mark, must be supplied, agreeing in every respect with the representations forming part of the Application for Registration. Special attention should be paid to this requirement, as the Certificate cannot in any such case be prepared until these unmounted copies are received by the Comptroller.

REGISTRATION OF SUBSEQUENT PROPRIETORS OF REGISTERED TRADE MARKS.

42. The Request and Declaration to be made by a subsequent Proprietor on application for the registration in his name of a registered Trade Mark must be made on Form "K" (see para. 3).

H. READER LACK,
Patent Office, Trade Marks Branch, Comptroller.
London.

January 1884.

(a) This Form was not in the Forms originally issued.

SCHEDULES.



FIRST SCHEDULE.

FEES. ⁽¹⁾

	£	s.	d.
1. On application to register a trade mark for one or more articles included in one class	0	5	0
2. On appeal to Board of Trade on refusal of Comptroller to register	1	0	0
3. For registration of a trade mark for one or more articles included in one class	1	0	0
4. For registering a series of trade marks, for every additional representation after the first in each class	0	5	0
5. For entering notice of opposition, for each trade mark, whether in one or more classes	1	0	0
6. On application to register a subsequent proprietor in cases of assignment or transmission, the first mark	1	0	0
7. For every additional mark assigned or transmitted at the same time	0	2	0
8. For certificate of refusal to register a trade mark under section 77	1	0	0
9. For certificate of refusal at the same time for more than one trade mark, for each additional trade mark after the first	0	10	0
10. For continuance of mark at expiration of 14 years	1	0	0

⁽¹⁾ All fees must be paid by stamped form. See *Instructions, post.*

TRADE MARKS FEES.

	£	s.	d.
11. Additional fee where fee is paid within three months after expiration of 14 years	0	10	0
12. Additional fee for restoration of trade mark where removed for nonpayment of fee .	1	0	0
13. For altering address on the register, for every mark.	0	5	0
14. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged.	0	10	0
15. For cancelling the entry or part of the entry of a trade mark upon the register, on the application of the owner of such trade mark.	0	5	0
16. On request to Comptroller to correct a clerical error	0	5	0
17. For certificate of registration to be used in legal proceedings	0	10	0
18. For certificate of registration to be used for the purpose of obtaining registration in foreign countries	0	5	0
19. For copy of notification of registration .	0	2	0
20. Settling a special case by Comptroller .	2	0	0
21. For inspecting register, for every quarter of an hour	0	1	0
22. For making a search amongst the classified representations of trade marks, for every quarter of an hour	0	1	0
23. For office copy of documents, for every 100 words (but never less than one shilling)	0	0	4
24. For certifying office copies, MS. or printed	0	1	0
25. For certificate of Comptroller under section 96	0	5	0

	£	s.	d.
26. In cases where a trade mark requires a greater space than two inches of the depth of the page of the <i>Trade Marks Journal</i> , for each additional inch or part of an inch	0	2	0
27. Manchester Trade Marks Office	Same as above		
28. Sheffield Marks	Same as above		
29. On appeal from Cutlers' Company, Sheffield, to Comptroller	1	0	0

J. CHAMBERLAIN,
President of the Board of Trade.

Approved,
CHARLES C. COTES.
HERBERT J. GLADSTONE,
Lords Commissioners of
Her Majesty's Treasury.

4th December, 1883.

SECOND SCHEDULE.

FORMS.

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⁽¹⁾ See *Instructions*, 42. In original issue of Rules this form was called "Assignment of Trade Mark."

⁽²⁾ For these Forms, see *Instructions*, *post*.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

F. ⁽¹⁾APPLICATION FOR REGISTRATION OF TRADE MARK ⁽²⁾.

58.
TRADE
MARKS.

One representation to be fixed within this square, and two others to be sent on separate sheets of foolscap.

Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.

You are hereby requested to register the accompanying Trade Mark in Class _____, in respect of (a)

in the name of (b)

who claims to be the proprietor thereof (c)

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

(Signed) (d)

Dated this _____ day of _____ 1883.

NOTE.—If the Trade Mark has been in use in respect of the goods since before August 13th, 1875, state length of such user.

⁽¹⁾ This Form is by Rule 4 substituted for Form F. in the 1st Schedule to the Act.

⁽²⁾ See s. 62.

(a) Only goods contained in one and the same class should be set out here.

A separate application form is required for each separate class.

(b) Here insert legibly the full name, address, and business of the individual, firm, or company. In the case of an individual, add trading style (if any).

(c) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

(d) To be signed by the applicant; or, in the case of a firm, by a partner, adding "A member of the firm," or, in the case of a company, by the Secretary or other Principal Officer, adding, "For the Company."

Or, in any case, an agent may sign, adding "Agent."

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

I.

FEE FOR REGISTRATION OF A TRADE MARK (1).

your request I hereby transmit the pro-
 registration of the Trade Mark No.

am,

nt Servant,

Printed and Published
 by the
 Stationery Office
 (Ask Leave to Print)

☐ Book Unrecorded
 (Ask Leave to Print)

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

H.

<p>£1 TRADE MARKS.</p>

FORM OF APPEAL TO BOARD OF TRADE ON REFUSAL OF
COMPTROLLER TO REGISTER A TRADE MARK. ⁽¹⁾

SIR,

I HEREBY give notice of my intention to appeal against
your decision upon my application to register a Trade
Mark

No. in Class for

and I beg to submit my case* for the decision of the Board
of Trade.

I am, Sir,

Your obedient Servant,

* The state-
ment of the case
to be written
upon foolscap
paper (on one
side only), with
a margin of two
inches on the
left-hand side
thereof.

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 62.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

I.

FEE FOR REGISTRATION OF A TRADE MARK ⁽¹⁾.

SIR,

IN reply to your request I hereby transmit the prescribed fee for the registration of the Trade Mark No.
in Class

I am,

Sir,

Your obedient Servant,

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See Schedule of Fees above.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

J.

NOTICE OF OPPOSITION TO APPLICATION FOR
REGISTRATION.⁽¹⁾

£1
TRADE
MARKS.

[To be accompanied by an unstamped duplicate.]

In the matter of an Application,
No. by
of

SIR,

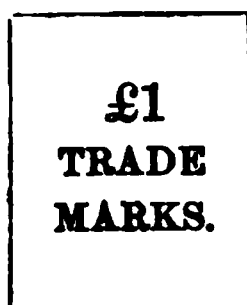
NOTICE is hereby given that I
of
oppose the Registration of the Trade Mark advertised
under the above number for Class in the Trade
Marks Journal of the day of 188 , No
 , page .

The grounds of opposition are as follows :—

To be dated
and signed at the
end by the oppo-
nent or his soli-
citor.

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 69.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

K.

REQUEST TO ENTER NAME OF SUBSEQUENT PROPRIETOR
OF TRADE MARK UPON THE REGISTER, WITH DECLARATION IN SUPPORT THEREOF.⁽¹⁾

(a) Or We.
Here insert
name, full ad-
dress, and de-
scription.

(b) My or our.

(c) Or names.

(d) I am, or
We are.

I, (a)

hereby request that you will enter (b) name (c)
in the Register of Trade Marks as proprietor of the
Trade Mark No. in Class .

(d) entitled to the said Trade Mark and to the
goodwill of the business concerned in the goods with re-
spect to which the said Trade Mark is registered.

(e) Here state
whether Trade
Mark trans-
mitted by death,
marriage, bank-
ruptcy, or other
operation of law,
and if entitled
by assignment
state the par-
ticulars thereof
as, e.g., "by deed
dated the day
of 188 , made
between So-and-
So of the one
part."

(f) This para-
graph is not re-
quired when the
declaration is
made out of the
United King-
dom.

(g) To be sign-
ed here by the
person making
the declaration.

(e)

And I do solemnly and sincerely declare that the above
several statements are true, and the particulars above set
out comprise every material fact and document affecting
the proprietorship of the said Trade Mark as above
claimed.

(f) And I make this solemn declaration conscientiously
believing the same to be true, and by virtue of the provi-
sions of the Statutory Declarations Act, 1835.

(g)

Declared at

this day of 188 .

Before me,

(h)

(h) Signature
and title of the
authority before
whom the decla-
ration is made.

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 87, and Trade Marks Rules, 34 to 38.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

L.

REQUEST FOR CERTIFICATE OF REFUSAL TO REGISTER A
TRADE MARK IN USE BEFORE 13 AUGUST, 1875.⁽¹⁾

£1
TRADE
MARKS.

In the matter of an Applica-
tion for registration of an
old Trade Mark, No.
in Class .

SIR,

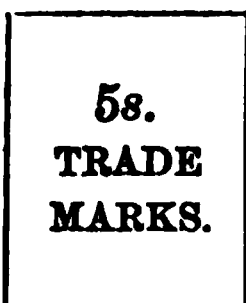
I, ,
of ,
the Applicant in the above matter, hereby request you to
furnish me with your Certificate of Refusal to register the
said Trade Mark.

* Signature of
applicant.

Dated this day of 188 .

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 77.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883,

M.

NOTICE OF APPLICATION FOR ALTERATION OF ADDRESS ON
REGISTER OF TRADE MARKS.⁽¹⁾

In the matter of the Trade
Mark, No. registered
in Class

SIR,

NOTICE is hereby given that I
of

the registered Proprietor of the Trade Mark numbered as
above desire that my address on the Register of Trade
Marks be altered to

Dated this day of 188 .

* Signature of
proprietor.

*

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See Trade Marks Rules, 46.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

N.

NOTICE OF APPLICATION FOR ALTERATION OR RECTIFICATION OF REGISTER OF TRADE MARKS ⁽¹⁾.TRADE
MARKS.

In the matter of the Trade Mark,
No. , registered
in Class in the name of

SIR,

NOTICE is hereby given that by an Order of the Court made on the day of 188 , it was directed that the entry on the Register of Trade Marks in respect of the Trade Mark numbered as above should be rectified in the manner therein specified.

- An Office Copy of the Order of the Court is enclosed herewith.

Dated this day of 188 .

*

* To be signed
by the person
interested or his
agent.

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 90 (3).

TRADE MARKS.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

O.

FORM OF APPLICATION BY PROPRIETOR OF REGISTERED
TRADE MARK TO CANCEL ENTRY ON REGISTER ⁽¹⁾.

Trade Mark No. Class advertised in "Trade
Marks Journal," No. , page .

Name of Registered Proprietor or Firm

Place of Business

I, the undersigned,
of,

[or I, the undersigned,
a member of the Firm of

of

on the behalf of my said

Firm]

apply that the entry upon the Register of the Trade
Marks in Class of the Trade Mark No. may be
cancelled.

The day of 188 .

(Signed)

This is the statement marked "O" referred to in the
Declaration of made
before me the of 188 .

⁽¹⁾ Neither the Act nor Rules deal specifically with the cancelling of
Trade Marks ; but see s. 79 (5), and Trade Marks Rules, 45.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*P.*FORM OF DECLARATION IN SUPPORT OF APPLICATION FOR
CANCELLATION OF TRADE MARK BY OWNER ⁽¹⁾.

I, _____ of _____ ; [or
I _____ a member of the Firm of
_____ of _____]

do hereby solemnly and sincerely declare, to the best of
my knowledge and belief, as follows :—

(1) The Application signed by me, and dated the
day of _____ 188 , and marked with the letter “O,”
and shown to me at the time of making this Declaration,
is true.

(2) I am the person whose name appears on the Register
of Trade Marks as the Proprietor of the Trade Mark re-
ferred to in the said Application marked with the
letter “O.”

[or My said Firm is the Firm whose name appears on the
Register of Trade Marks as the Proprietor of the Trade
Mark referred to in the said Application marked with the
letter “O.”

And I make this solemn declaration conscientiously
believing the same to be true, and by virtue of the pro-
visions of the Statutory Declarations Act, 1835.

(Signed)

Declared at
this _____ day of {
188 .
Before me,

If the declaration be made before a Commissioner to
administer oaths it will require to be stamped with a
2s. 6d. impressed Inland Revenue stamp.

⁽¹⁾ See note to preceding Form.

TRADE
MARKS.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Q.

FORM OF REQUEST FOR CORRECTION OF CLERICAL ERROR
IN REGARD TO A TRADE MARK ⁽¹⁾.

SIR,

I HEREBY request that

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

TRADE
MARKS.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

R.

REQUEST FOR CERTIFICATE OF REGISTRATION OF TRADE
MARK FOR USE IN OBTAINING REGISTRATION ABROAD ⁽²⁾.

In the matter of the Trade Mark
No. , registered in
Class in the name of

SIR,

I

of

the registered proprietor of the above Trade Mark hereby
request you to furnish me with your Certificate of Regis-
tration for use in obtaining registration of the same in*

* Here state
name of country
in which regis-
tration is to be
sought.

† Signature.

†

Dated this day of 188 .

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 91.

⁽²⁾ See s. 103.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

S.

REQUEST FOR CERTIFICATE OF REGISTRATION OF TRADE
MARK FOR USE IN LEGAL PROCEEDINGS ⁽¹⁾.TRADE
MARKS.

In the matter of the Trade Mark,

No. , registered in

Class in the name of

SIR,

I

of

the registered proprietor of the above Trade Mark hereby
request you to furnish me with your Certificate of Regis-
tration for use in the following Legal Proceedings*

* Here state
exact title of
legal proceed-
ings.

†

† Signature.

Dated this day of 188 .

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

(¹) See Trade Marks Rules, 57.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

T.

APPLICATION FOR SETTLEMENT OF A SPECIAL CASE ON
APPLICATION TO REGISTER A TRADE MARK ⁽¹⁾.

In the matter of the Application
of _____ and
of the Application of _____

SIR,
NOTICE is hereby given that I, _____,
of _____,
and I, _____,

are unable to agree upon the facts on which the opinion
of the Court is to be taken, and that we request you to fix
a day on which we may attend before you and obtain your
finding on the matters of fact to be submitted to the
Court as settled.

Dated this _____ day of _____ 188 .

* To be signed
by both parties.

*

*

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See Trade Marks Rules, 43.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

T¹.REQUEST FOR CERTIFICATE OF COMPTROLLER AS TO
APPLICATION FOR REGISTRATION OF A TRADE MARK.TRADE
MARKS.In the matter of the Trade Mark No.
in Class .

SIR,

I,

of

hereby request you to furnish me with your certificate
that (a)

(b)

(a) Here set
out the particu-
lars which the
Comptroller is
requested to cer-
tify.

Dated this day of 188 .

(b) Signature.

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

U.GENERAL CERTIFICATE OF COMPTROLLER-GENERAL AS TO
APPLICATION FOR OR REGISTRATION OF A TRADE MARK⁽¹⁾.TRADE
MARKS.Patent Office, Trade Marks Branch,
London,

188 .

I,

Comptroller-General of Patents, Designs, and Trade
Marks, hereby certify⁽¹⁾ See s. 96.

TRADE MARKS.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

V.

REQUEST FOR COPY OF OFFICIAL NOTIFICATION OF REGISTRATION OF TRADE MARK ⁽¹⁾.

In the matter of the Trade Mark,
No. , registered
in Class .

SIR,

I

of

the registered proprietor of the Trade Mark above named,
hereby request that you will furnish me with a copy of the
official notification of the registration of the same.

* Signature.

*

Dated this day of 188 .

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 88.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

W.

FORM OF APPEAL FROM CUTLERS' COMPANY AT SHEFFIELD
TO COMPTROLLER⁽¹⁾.TRADE
MARKS.*[To be accompanied by an unstamped duplicate.]*

SIR,

I HEREBY give notice of appeal against the decision of
the Cutlers' Company of Sheffield in regard to my appli-
cation for registration of a Trade Mark No. in
Class for ,
and I beg to submit my case* for your decision accord-
ingly.

* The state-
ment of the case
to be written
upon foolscap
paper (on one
side only), with
a margin of two
inches on the
left-hand side
thereof.

† Signature.

†

Dated this day of 188 .

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ See s. 81.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

X.

FORM OF COUNTER-STATEMENT ⁽¹⁾.

In the Matter of an Application No.
and of the Opposition thereto

In reply to the Notice of Opposition in this matter by
of , I give notice by way of Counter-
statement that I rely for my Application on the following
grounds :—

(To be dated and signed by the Applicant or his
Solicitor.)

To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.

⁽¹⁾ This form was published in the Trade Mark Instructions, where it will also be found. See s. 69 in regard to opposition as well as Form J (Trade Marks Form).

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Y.

FORM OF BOND FROM PERSONS OPPOSING APPLICATION
AND WHO HAVE BEEN REQUIRED TO GIVE SECURITY
FOR COSTS UNDER S. 69 (3) (1).

Patents, Designs, and Trade Marks Act, 1883.

Trade Marks.

In the Matter of an Application No.

and of the Opposition thereto No .

Know all men by these presents that we of
and of are jointly and severally
held and firmly bound to Henry Reader Lack the Comptroller-General of Patents Designs and Trade Marks in the penal sum of pounds of good and lawful money of Great Britain to be paid to the said Henry Reader Lack or to other the Comptroller-General of Patents Designs and Trade Marks for the time being for which payment to be well and faithfully made we bind ourselves and each of us our and each of our heirs executors and administrators firmly by these presents sealed with our Seals.

Dated this day of 18 .

Whereas pursuant to the provisions of the Patents Designs and Trade Marks Act 1883 and of the Trade Marks Rules 1883 an application (No.) has been made by of to the Comptroller-General of Patents Designs and Trade Marks for the registration of a certain Trade Mark And whereas the above-bounden have delivered a notice of opposition to such registration and the said

(1) This form was published in the Trade Mark Instructions, where it will also be found. See s. 69 as to giving security for costs.

have sent to the said Comptroller-General a counter-statement of the grounds on which they rely for their application And whereas the said Comptroller-General pursuant to the terms of the said Act hath required the said

to enter into the above-written obligation (subject to the condition herein-after contained) as security for such costs as may be awarded in respect of such opposition.

Now the condition of the above-written obligation is such that if the said or either of them their or either of their heirs executors or administrators do and shall well and truly pay or cause to be paid to all such costs as the High Court of Justice shall think fit to award to the said in respect of the said opposition then the above-written obligation is to be void or else to remain in full force and virtue.

Signed sealed and delivered by the above-
bounden and
in the presence of .

THIRD SCHEDULE.

GENERAL NOTE.

Any wares made of mixed materials (for example, of both cotton and silk) shall be included in such one of the classes appropriated to those materials as the registrar may desire.

CLASSIFICATION OF GOODS ⁽¹⁾.*Illustrations.*

Note.—Goods are mentioned in this column by way of illustration, and not as an exhaustive list of the contents of a class.

CLASS 1.

Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

Such as—

Acids, including vegetable acids.
Alkalies.
Artists' colours.
Pigments.
Mineral dyes.

CLASS 2.

Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

Such as—

Artificial manure.
Cattle medicines.
Deodorisers.
Vermin destroyers.

CLASS 3.

Chemical substances prepared for use in medicine and pharmacy.

Such as—

Cod liver oil.
Medicated articles.
Patent medicines.
Plasters.
Rhubarb.

⁽¹⁾ See Rule 6.

CLASSIFICATION OF GOODS (TRADE MARKS).

CLASS 4.

Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes.

Such as—

Resins.

Oils used in manufactures and not included in other classes.

Dyes, other than mineral.

Tanning substances.

Fibrous substances (*e.g.*, cotton, hemp, flax, jute).

Wool.

Silk.

Bristles.

Hair.

Feathers.

Cork.

Seeds.

Coal.

Coke.

Bone.

Sponge.

CLASS 5.

Unwrought and partly wrought metals used in manufacture.

Such as—

Iron and steel, pig or cast.

Iron, rough.

„ bar and rail, including rails for railways.

„ bolt and rod.

„ sheet, and boiler and armour plates.

„ hoop.

Lead, pig

„ rolled.

„ sheet.

Wire.

Copper.

Zinc.

Gold, in ingots.

CLASS 6.

Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in Class 7.

Such as—

Steam engines.
Boilers.
Pneumatic machines.
Hydraulic machines.
Locomotives.
Sewing machines.
Weighing machines.
Machine tools.
Mining machinery.
Fire engines.

CLASS 7.

Agricultural and horticultural machinery, and parts of such machinery.

Such as—

Ploughs.
Drilling machines.
Reaping machines.
Thrashing machines.
Churns.
Cyder presses.
Chaff cutters.

CLASS 8.

Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.

Such as—

Mathematical instruments.
Gauges.
Logs.
Spectacles.
Educational appliances.

CLASS 9.

Musical instruments.

CLASS 10.

Horological instruments.

CLASSIFICATION OF GOODS (TRADE MARKS).

CLASS 11.

Instruments, apparatus,
and contrivances, not
medicated, for surgical or
curative purposes, or in
relation to the health of
men or animals.

Such as—

Bandages.
Friction gloves.
Lancets.
Fleams.
Enemas.

CLASS 12.

Cutlery and edge tools.

Such as—

Knives.
Forks.
Scissors.
Shears.
Files.
Saws.

CLASS 13.

Metal goods not included in
other classes.

Such as—

Anvils.
Keys.
Basins (metal).
Needles.
Hoes.
Shovels.
Corkscrews.

CLASS 14.

Goods of precious metals
(including aluminium,
nickel, Britannia metal,
&c.) and jewellery, and
imitations of such goods
and jewellery.

Such as—

Plate.
Clock cases and pencil
cases of such metals.
Sheffield and other plated
goods.
Gilt and ormolu work.

CLASS 15.

Glass.

Such as—

Window and plate glass.
Painted glass.
Glass mosaic.
Glass beads.

CLASS 16.

Porcelain and earthenware.	Such as— China. Stoneware. Terra Cotta. Statuary porcelain. Tiles. Bricks.
----------------------------	--

CLASS 17.

Manufactures from mineral and other substances for building or decoration.	Such as— Cement. Plaster. Imitation marble. Asphalt.
--	--

CLASS 18.

Engineering, architectural, and building contrivances.	Such as— Diving apparatus. Warming apparatus. Ventilating apparatus. Filtering apparatus. Lighting contrivances. Drainage contrivances. Electric and pneumatic bells.
---	---

CLASS 19.

Arms, ammunition, and stores not included in Class 20.	Such as— Cannon. Small-arms. Fowling pieces. Swords. Shot and other projectiles. Camp equipage. Equipments.
--	--

CLASSIFICATION OF GOODS (TRADE MARKS).

CLASS 20.

Explosive substances.

Such as—

Gunpowder.
 Gun-cotton.
 Dynamite.
 Fog-signals.
 Percussion caps.
 Fireworks.
 Cartridges.

CLASS 21.

Naval architectural contri-
 vances and naval equip-
 ments not included in
 Classes 19 and 20.

Such as—

Boats.
 Anchors.
 Chain cables.
 Rigging.

CLASS 22.

Carriages.

Such as—

Railway carriages.
 Waggon.
 Railway trucks.
 Bicycles.
 Bath chairs.

CLASS 23.

Cotton yarn and thread.

Such as—

Sewing cotton on spools
 or reels.
 Sewing cotton not on
 spools or reels.
 Dyed cotton yarns.

CLASS 24.

Cotton piece goods of all
 kinds.

Such as—

Cotton shirtings.
 Long cloth.

CLASS 25.

Cotton goods not included
 in Classes 23, 24, or 38.

Such as—

Cotton lace.
 Cotton braids.
 Cotton tapes.

CLASS 26.

Linen and hemp yarn and thread.

CLASS 27.

Linen and hemp piece goods.

CLASS 28.

Linen and hemp goods not included in Classes 26, 27, and 50.

CLASS 29.

Jute yarns and tissues, and other articles made of jute not included in Class 50.

CLASS 30.

Silk, spun, thrown, or sewing.

CLASS 31.

Silk piece goods.

CLASS 32.

Other silk goods not included in Classes 30 and 31.

CLASS 33.

Yarns of wool, worsted, or hair.

CLASS 34.

Cloths and stuffs of wool, worsted, or hair.

CLASSIFICATION OF GOODS (TRADE MARKS).

CLASS 35.

Woollen, and worsted and
hair goods not included
in Classes 33 and 34.

CLASS 36.

Carpets, floor-cloth, and oil-
cloth.

Such as—
Drugget.
Mats and matting.
Rugs.

CLASS 37.

Leather, skins unwrought
and wrought, and articles
made of leather not in-
cluded in other classes.

Such as—
Saddlery.
Harness.
Whips.
Portmanteaus.
Furs.

CLASS 38.

Articles of clothing.

Such as—
Hats of all kinds.
Caps and bonnets.
Hosiery.
Gloves.
Boots and shoes.
Other ready-made
clothing.

CLASS 39.

Paper (except paper-hang-
ings), stationery, and book-
binding.

Such as—
Envelopes.
Sealing wax.
Pens (except gold pens).
Ink.
Playing cards.
Blotting cases.
Copying presses.

CLASS 40.

Goods manufactured from india-rubber and gutta-percha not included in other classes.

CLASS 41.

Furniture and upholstery.

Such as—

Paper hangings.

Papier-mâché.

Mirrors.

Mattresses.

CLASS 42.

Substances used as food, or as ingredients in food.

Such as—

Cereals.

Pulses.

Olive oil.

Hops.

Malt.

Dried fruits.

Tea.

Sago.

Salt.

Sugar.

Preserved meats.

Confectionery.

Oil cakes.

Pickles.

Vinegar.

Beer clarifiers.

CLASS 43.

Fermented liquors and spirits.

Such as—

Beer.

Cyder.

Wine.

Whisky.

Liqueurs.

CLASSIFICATION OF GOODS (TRADE MARKS).

CLASS 44.

Mineral and aërated waters,
natural and artificial, in-
cluding ginger-beer.

CLASS 45.

Tobacco, whether manufac-
tured or unmanufactured.

CLASS 46.

Seeds for agricultural and
horticultural purposes.

CLASS 47.

Candles, common soap, de-
tergents ; illuminating,
heating, or lubricating
oils ; matches ; and starch,
blue, and other prepara-
tions for laundry pur-
poses.

Such as—

Washing powders.
Benzine collas.

CLASS 48.

Perfumery (including toilet
articles, preparations for
the teeth and hair, and
perfumed soap).

CLASS 49.

Games of all kinds and sport-
ing articles not included
in other classes.

Such as—

Billiard tables.
Roller skates.
Fishing nets and lines.
Toys.

CLASS 50.

Miscellaneous, including—

Such as—

Coopers' wares.

- (1.) Goods manufactured from ivory, bone, or wood, not included in other classes.
- (2.) Goods manufactured from straw or grass, not included in other classes.
- (3.) Goods manufactured from animal and vegetable substances, not included in other classes.
- (4.) Tobacco pipes.
- (5.) Umbrellas, walking sticks, brushes and combs.
- (6.) Furniture cream, plate powder.
- (7.) Tarpaulins, tents, rick-cloths, rope, twine.
- (8.) Buttons of all kinds, other than of precious metal or imitations thereof.
- (9.) Packing and hose of all kinds.
- (10.) Goods not included in the foregoing classes.

J. CHAMBERLAIN,

President of the Board of Trade.

21st December, 1883.

APPENDICES.

APPENDIX A.

FORMS OF PLEADINGS, ORDERS, ETC.

PATENTS.

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App. A.

TRADE MARKS.

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PLEADINGS AND ORDERS IN PATENT ACTIONS.

I. Statement of Claim in an action for Infringement of a Patent (a).

(Title.)

THE defendant has infringed the plaintiff's Patent No. 14,084 granted for the term of 14 years from the 21st May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement, and £100 damages.

Particulars of breaches are delivered herewith.

Place of trial, Durham.

(Signed.)

Delivered

(a) This form is the form contained in the forms annexed to the Rules of the Supreme Court, 1883.

II. *Particulars and Notice of Breaches.*

(Title.)

Particulars and notice of Breaches delivered along with the Statement of Claim in pursuance of the Statute in that case made and provided.

Take notice that the following are particulars of the breaches complained of by the plaintiffs in this action for infringement of the letters patent and patent rights in the Statement of Claim mentioned.

That the defendants have at divers times, between the day of and the date of the commencement of this action, infringed the letters patent and patent rights granted to bearing date the No. by the manufacture or sale or use of manufactured according to and also in imitation of the invention comprised in the letters patent and in the specification.

The precise number of days and amounts of the defendants' infringements, as aforesaid, are not at present known to the plaintiffs ; but when the same shall have been ascertained the plaintiffs will claim to recover full compensation in respect of such infringements ; and take notice that the plaintiffs will also claim from the defendants an account and payment of all profits which they may make and profits of which the plaintiffs may be deprived by reason of the infringements of the letters patent and patent rights whilst this action shall have been pending.

And also an injunction against the repetition and continuance of the infringements of the said letters patent and patent rights and against the committal of any injury of a like kind relating to the said letters patent.

Dated the day of

App. A. **III. *Statement of Defence in an action for Infringement of a Patent.*** (a)

(Title.)

Defence.

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.
5. [*Denial of any other matter of fact affecting the validity of the patent.*]
6. The patent was not assigned to the plaintiff.

(Signed.)

Delivered the day of 18 .

IV. *Particulars and Notice of Objections.*

(Title.)

Particulars and Notice of Objections, delivered along with the Statement of Defence in pursuance of the Statute in that case made and provided.

Take notice that at the trial of this action, the defendant will rely on the following objections, in addition to any he may be entitled to rely on without particulars.

No in-
fringe-
ment.

Plaintiff
not the true
inventor.

Invention
not new.

Not subject
matter of a
patent.

A patent
for a
principle.

Not useful.

1. That the defendant did not infringe the alleged patent.
2. That the [*plaintiff*] was not the first and true inventor.
3. That the alleged invention was not a new invention.
4. That the alleged invention was not the proper subject of letters patent.
 - 4a. That the alleged patent was a patent for a principle only, and not for any manner of new manufacture.
 - 4b. That the alleged invention claimed a principle of applying old contrivances to new objects.
5. That the alleged invention was not useful.

(a) This form is the form given in R. S. C. 1883.

6. That the specification does not particularly describe and ascertain the nature of the alleged invention and in what manner the same was to be and may be performed.

App. A.
Specifica-
tion in-
sufficient.
Does not
produce
alleged
effects.
Persons of
reasonable
skill cannot
perform it.
Some
methods
impracti-
cable.
Some steps
omitted.
7. That the alleged invention does not produce the effects described in the specification.
8. That the description in the specification is not such as to enable persons of reasonable skill and knowledge to perform the said invention.
9. That, of the several alternative methods described in the specification of performing the said alleged invention, all or some or one are or is impracticable.
10. That the methods of performing the said invention described in the said specification, or some or one of them or of the steps or processes necessary to attain the effects described, are omitted.
11. That the said did not sufficiently describe and point out in his specification, which of the matters and things therein mentioned he claimed to have invented and which he did not claim to have invented or admitted to be old.

Does not
distinguish
new from
old.
12. That the alleged invention was generally known to previous to the date of the letters patent.

Known
previous to
grant.
13. That prior to the date of the alleged letters patent the alleged invention was used at in the year in the manner following, that is to say, &c.

Used prior
to grant.
14. That the alleged invention, and the several parts thereof were prior to the date of the said alleged letters patent, published in the United Kingdom, by the printing and publication of the several specifications and drawings therein referred to and the circulars, notices and books hereinafter mentioned respectively describing and mentioning the said alleged invention and the several parts thereof respectively.

Published
prior to
grant.

Letters Patent granted to dated No.
The whole specification is relied on.

Letters Patent granted to dated No.
page lines to

Circular published at by
describing &c. &c.

App. A. 15. That the said alleged invention, and the several parts thereof respectively, were, prior to the date of the said alleged letters patent, used and published by the manufacture of articles according to the said alleged invention and the several parts thereof respectively, and the sale and use of articles so manufactured as well by the several persons aforesaid at or in their several places of residence or business, as also by the several persons at or in the several places following : that is to say,

Used by
certain
persons
prior to
grant.

A. B. of

Dated the day of .

V. Notice of motion to Restrain the Infringement of a Patent.
(Title.)

Take notice that this Honourable Court will be moved before on at o'clock in the forenoon, or as soon after as counsel can be heard, by on the part of the above-named plaintiff, that the defendant A. his (or defendants A. B., their and each of their) officers, contractors, servants, workmen and agents (*as the case may be*) may be restrained by the order and injunction of this Honourable Court, from making and selling, or making or selling, any made according to the process discovered in the specification of the letters patent, in the writ of summons mentioned, or according to any process being a colourable imitation thereof; and from in any manner infringing the said letters patent until the trial of this action or until further order.

VI. Interlocutory Order granting Injunction to an Assignee.

Seton, i. p. 344.

Usual undertaking as to damages. Let an injunction be awarded against the defendants to restrain the said defendants, their servants, &c., until the trial of this action or further order, from either directly or indirectly making, using or putting in practice the invention described in the

specification and drawings (particularly describing the nature of the said invention), granted to dated the day of and numbered and now vested by assignment in the plaintiff, or any part thereof, except as to any skates made by the plaintiff or his agent or agents. App. A.

VII. *Interlocutory Order, Refusing Injunction: Defendant undertaking to keep an account.*

Seton, i. p. 344.

Upon motion, &c., for an injunction to restrain, &c., and the defendant by his counsel undertaking to keep an account of moneys received or to be received by him, by reason of the sale or use of the parlour or roller skates in the (bill) mentioned, this Court doth not think fit to make any order upon the said motion, but doth order that the costs of the motion be costs in the cause.

VIII. *Notice of Motion to Inspect defendant's Machine, in an action for Infringement of a Patent.*

(Title and formal parts as above)

That the defendant may be ordered within seven days after service of the order to be made upon this application to make and file an affidavit verifying the several kinds of sewing machines sold or exposed for sale by him since the day of And that the said defendant may be ordered within seven days after filing such affidavit to produce at the office of his solicitor situate at one of each of the several different kinds of sewing machines which by such affidavit shall appear to have been sold or exposed for sale by him since the said day of ; and that the plaintiff, his solicitors and agent, and also three scientific witnesses to be named in the notice hereinafter mentioned, may be at liberty at all seasonable times and as often as may be requisite, upon giving three days' previous notice in writing to the defendant's solicitors, to inspect the said machines and to work the same. And that the said defendant may be ordered to produce the said machines upon any examination of witnesses in that action and at the trial thereof, as the plaintiff may require. And that the costs of this application may be costs in the action.

App. A. IX. *Order for Inspection of Defendants' process by Experts, and to take samples.*

Seton, i. p. 350.

Let A. and B. of be at liberty at all seasonable times and as often as requisite, on giving three days' notice to the defendants, to enter into the business premises of the defendants where the process of decorating or printing tin and metal plates is carried on by the defendants as stated in the plaintiffs' statement of claim and mentioned in the said affidavits or some of them; and to inspect and to examine there the whole of the process by which such printed and decorated tin and metal plates are manufactured by the defendants, and to take, on paying the reasonable charges of the defendants for the same, samples of such plates, and upon and during such inspection to make such observations as may be necessary and expedient for the purpose of obtaining full information and evidence of the mode by which such plates are manufactured by the defendants.

X. *Injunction after Trial: account of Sales and Profits, Discovery and Delivery up.*

Seton, i. p. 353.

Let an injunction be awarded to restrain the defendant, his servants, agents, &c., during the continuance of the said letters patent granted to and dated the day of numbered from using, exercising, or causing or permitting to be used or exercised, the invention described in the hereinbefore mentioned specification and drawings of the said ; and from selling, letting for hire, or making any profitable use or permitting for sale, letting for hire or profitable use of any roller or runner skates not made by the plaintiff or his licensees and having applied thereto rollers or runners in manner described, and for the purposes mentioned in the said specification, or fitted with any apparatus for causing the skate to run in a curved line in the manner described in the said specification and drawings, or differing therefrom only colourably and by the substitution of mere mechanical equivalents. And let an account be taken of all roller skates, being the same as the

skates sold by the defendant to as in the pleadings App. A.
 mentioned or otherwise made in infringement of the said
 letters patent, which have been manufactured or sold or let
 for hire; by or by the order or for the use or profit of the
 defendant, and also of the gains and profits made by the
 defendant by reason of such manufacture, sale or letting for
 hire, and let the defendant within (seven) days after the
 service upon him of the chief clerk's certificate of the result of
 such account, pay to the plaintiff the amount of such gains
 and profits. And let the defendant forthwith upon oath
 deliver up to the plaintiff or break up or otherwise render
 unfit for use all roller skates, or part of roller skates so manu-
 factured or let for hire by or by the order or for the use of
 the defendant in infringement of the said letters patent as
 aforesaid which are in the possession, custody or power of the
 defendant or his servants or agents. Defendant to pay to
 the plaintiff the costs of the suit.

XI. *Advertisement of intended Application for Prolongation.*

In the matter of Letters Patent, bearing date the
 day of No. granted to A. B. of

Notice is hereby given that it is the intention of the said
 A. B. to present a petition to Her Majesty in Council,
 praying Her Majesty to grant a prolongation of the term of
 the said letters patent; and notice is hereby further
 given that on the day of next, or on such
 subsequent day as the Judicial Committee shall appoint for
 that purpose, application will be made by counsel to the said
 committee, that a time may be fixed for hearing the matter
 of the said petition, and any person desirous of being heard
 in opposition to said petition must enter a caveat to that
 effect at the Privy Council Office, on or before the 29th day
 of April, 1882.

Dated the day of .

C. D.

Solicitors for the petitioner.

App. A. XII. *Petition to Privy Council for Prolongation of a Patent.*

To the Queen's Most Excellent Majesty in Council.

In the matter of Letters Patent granted to A. B. of
in the county of bearing date the day of
 , No. , for his invention of [set out title
of invention.]

The Humble Petition of the said A. B.

Sheweth as follows :

**Grant of
patent.**

1. That your petitioner obtained the grant of Your Majesty's Royal Letters Patent, under the Great Seal of the United Kingdom of Great Britain and Ireland [*or under the seal of the Patent Office*] bearing date the day of for his invention of [*set out title of invention*], whereby Your Majesty did give and grant unto your petitioner, his executors, administrators, and assigns, the sole privilege to make, use, exercise, and vend his said invention within the United Kingdom of Great Britain and Ireland, [*the Channel Islands*] and the Isle of Man, for the term of 14 years from the date of the said letters patent.

**Filing of
specifica-
tion and
payment of
fees.**

2. That in pursuance of the conditions or provisions in the said letters patent contained a proper and sufficient specification of the said invention and the manner in which the same was to be performed was duly filed in the [Great Seal] Patent Office, on the day of 18 , and all other the conditions contained in the said letters patent relating to the payment of stamp duties and other matters have all been duly performed.

Or in the case of patents granted under the Act of 1883 :—

That all the fees by law required to be paid in respect of the grant of the said letters patent, have been duly paid and all other the conditions contained in the said letters patent have been duly performed.

**Invention
new.**

3. That to the best of the knowledge and present belief of your petitioner, the said invention was at the date of the said letters patent a new invention within Your Majesty's realm, and that your petitioner was the true and first inventor (within the realm) of the said invention, and that such invention was the result of long continued great personal application, and at considerable expense, and that such invention was and is of great use and benefit to

the public and that the novelty and utility of the said App. A. invention have never been impeached or questioned.

4. That your Petitioner's invention is in part grounded on a prior invention for which, through his agent, he caused letters patents to be obtained, dated the day of , and which, though useful to a certain extent, your petitioner found to be incomplete when practically applied. After six years' trial, your petitioner succeeded in supplying the required improvements, and thereupon obtained letters patent for the invention, the subject of this petition. It relates to [*describe shortly the nature of the invention.*] Invention founded on a prior invention.

It is fully described in your petitioner's specification; to which, with the aid of models in illustration thereof, your petitioner craves leave to refer on the hearing of this petition.

5. That prior to the time when your petitioner made his said invention, there had been tried many different and distinct machines for effecting the desired object; among them the prior invention of your petitioner of the day of , but none of them satisfied fully the requirements needed. Failure of prior inventions.

6. That soon after the grant of the said letters patent in the year 18 , your petitioner returned to this country from New South Wales, where he was then residing, and he gave up a lucrative situation which he was then holding in that colony, in order that he might introduce his invention into general use in this country. He commenced to manufacture and vend the said invention, and he invested from time to time large sums of money in the buildings, machinery and plant required to carry on the said manufacture. Expenses in working invention.

7. That your petitioner has made every exertion in his power to bring his said invention, the subject of the said letters patents No. of the day of 18 , before the public, and to induce the public to adopt it. In addition to his personal efforts in practically demonstrating its usefulness, he has employed agents and has largely advertised it in public papers and by circulars. Efforts to bring invention before the public

8. That your petitioner has, since the date of the said Patent letters patent, been always ready and willing to supply the said comprised in the said invention promptly and at a fair and reasonable price to the public. article sold at reasonable price.

App. A. 9. That your petitioner has, since the date of the said letters patent, been ready and willing to consider applications for and to grant licences on fair and reasonable terms to manufacture the said machines.

Willingness
to grant
licences.

10. That the validity of the said letters patent has never been disputed in any respect.

Validity
never dis-
puted.

11. That on the day of your petitioner applied for and obtained a patent for or in respect of the said invention in [*set out foreign patent*] which patent having been granted for years from will expire on the day of [*or*] will expire with your petitioner's British patent and the said letters patent of the day of unless the term of such letters patent be prolonged according to the prayer of this petition.

Foreign
patent for
same
invention.

12. That notwithstanding all his exertions your petitioner has failed to obtain any sufficient remuneration from either the letters patent obtained in the United Kingdom [*or abroad*], as the same will appear from the accounts which will be submitted by your petitioner.

Not suffi-
cient profit.

or

Your petitioner has not derived any profits from the said invention, and has not been able to obtain any proper remuneration for the expenses incurred by him and for the labour and time bestowed in endeavouring to introduce the said invention to the public and to carry it into practical operation. Under the circumstances aforesaid, the said letters patent of the day of have not been productive of any benefit to your petitioner, but on the contrary have involved him in great losses.

No profit.

13. That your petitioner has now grounds to believe that the difficulties in bringing the said invention into public use have been removed, and he has a reasonable expectation that, if the term of the patent should be prolonged, the patent will become productive, and your petitioner will be enabled to obtain a fair remuneration and reward, and the public will be benefited by the continued efforts of your petitioner to bring the said invention into more general use.

Prolonga-
tion would
remunerate
patentee.

14. That your petitioner humbly submits that, under the circumstances of the case, an exclusive right of using the said invention for a further term of years, in addition to

Extension
prayed for.

the term granted in the said letters patent, will not be more than sufficient to enable your petitioner to obtain a fair remuneration and reward. App. A.

15. That your petitioner has caused the necessary and proper advertisements to be inserted in the *London Gazette*, and in the metropolitan and provincial newspapers, pursuant to the statutes in that case made and provided and the rules and regulations made in that behalf, notifying that it is the intention of your petitioner to apply to Your Majesty in Council for a prolongation of the said letters patent, the subject of this petition. Advertisements duly inserted.

Your petitioner therefore humbly prays that Your Majesty will be graciously pleased to take the case of your petitioner into your royal consideration, and to refer the same to the Judicial Committee of your Majesty's Most Hon. Privy Council, and that your petitioner may be heard before such committee by his counsel and witnesses, and that Your Majesty will be pleased to grant to your petitioner a prolongation of the term of the said letters patent for a further and additional term of fourteen years, or for such other term as to Your Majesty shall seem fit, and to grant new letters patent to your petitioner for such term as to Your Majesty shall seem fit after the expiration of the first term originally granted by the existing letters patent herein before mentioned, according to the form of the statute in such case made and provided.

And your petitioner will ever pray.

App. A.PLEADINGS AND ORDERS RELATING TO
INFRINGEMENT OF COPYRIGHT.XIII. *Statement of Claim in an action for infringement of
Copyright in a Design (a).*

1. The defendant has infringed the plaintiff's copyright in a registered design, No. , in class , registered the day of .
2. The said registered design is [*describe the design*].
3. The plaintiff duly caused the prescribed mark to be duly marked on all articles to which the said design was applied, before delivery on sale.
4. The following are the acts complained of :—
[*Set them out, with reference to s. 59.*]

The plaintiff claims an injunction to restrain the defendant, his servants and agent, from infringing the plaintiff's said registered design, and in particular from [*state any particular injunction sought*].

The plaintiff also claims £ damages.

XIV. *Statement of Defence in the same Action.*

1. The defendant did not infringe.
2. The alleged design was not duly registered.
3. The copyright in the said alleged design had expired previous to the alleged acts complained of in the statement of claim.
4. Before delivery on sale by the plaintiff of articles to which the said alleged design was applied, the plaintiff did

(a) Framed on model of form in action for infringing Trade Mark, R. S. C. 1883, see *post*.

not cause each of such articles to be marked with the prescribed mark or marks, denoting that the design was registered, nor did he take proper steps to ensure the marking of such articles, and the copyright in the said alleged design had expired previous to the alleged acts complained of in the said statement of claim. App. A.

&c.

Signed

Delivered.

XV. Injunction restraining infringement of Copyright in a Design.

Seton, i. p. 246.

Usual undertaking. Let the defendant C., his servants, &c., be restrained until after the, &c. ; from selling the design in the (*statement of claim*) mentioned, and from applying the same or any colourable imitation thereof to any substance or article of manufacture, and in particular from manufacturing ornamental sweetmeats made so as to resemble those of the plaintiff; and from selling or offering or exposing for sale any substance or article of manufacture to which the said design has been applied, and in particular the ornamental sweetmeats manufactured by the defendant, &c; as in the (*statement of claim*) mentioned, or any ornamental sweetmeats made so as to resemble those of the plaintiff.

XVI. Order continuing Injunction restraining Infringement of Copyright in a Design, and ordering Delivery up of articles specified. Payment of Costs.

McRea v. Holdsworth, 2 De G. & S. 499.

That the injunction awarded on the day of
against the defendants, restraining them, and each of them,
their workmen, servants and agents, from selling or disposing
of any of the articles of manufacture to which the plaintiffs'

App. A. design in the plaintiffs' (*statement of claim*) mentioned, or a fraudulent imitation thereof, had been applied as in the said (*statement of claim*) mentioned, and from applying the plaintiff's said design, or any fraudulent imitation thereof, to any woven fabrics or articles of manufacture, be continued until over the day of , and that the defendants should forthwith deliver up to the plaintiffs, for the purpose of being destroyed, the drawing or drawings, point paper, and the several cards used in applying the design in the plaintiffs' (*statement of claim*) mentioned; and also the articles manufactured by the defendants, to which the said plaintiffs' design had been applied, the same to be verified by affidavit. And that it should be referred to the taxing master to tax the reasonable and proper costs of the petition as between party and party, and to certify the amount thereof. And that such costs when taxed be paid by the defendants, and on payment thereof that all further proceedings in this suit should be stayed unless the defendants committed any breach of the injunction already awarded. Liberty to apply.

PLEADINGS AND ORDERS IN TRADE MARK ACTIONS.

XVII. *Statement of Claim in an action for Infringing a Trade Mark (a).*

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is [*describe it*]. •

[*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.*]

3. The following are the acts complained of, viz., [*set them out*].

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account or damages.

Signed.

Delivered.

(a) R. S. C. 1883, App. C. s. 6, No. 8.

XVIII. *Statement of Defence in same action (a).*

App. A.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

Signed.

Delivered.

XIX. *Notice of Motion to restrain use of a Registered Trade Mark (b).*

(Title.)

[*Formal parts as in Notice of Motion to restrain Infringement of a Patent, supra,*]

“be restrained until or further order, from infringing the plaintiff's trade mark, registered in pursuance of the Patents Designs and Trade Marks Act, 1883, and from selling or offering for sale any tea in or from otherwise using wrapper having imprinted thereon any imitation or colourable imitation of the plaintiff's trade mark.”

XX. *Interim Order restraining use of Trade Mark registered under the Patents Designs and Trade Marks Act, 1883.*

Seton, i. p. 234.

Usual undertaking as to damages. Let the defendant E. be restrained until the day of , or until further order, from infringing the plaintiff's trade marks registered in pursuance of the Patents Designs and Trade Marks Act, 1883, or either of them, and from selling or offering for sale any tea in or from otherwise using wrappers having imprinted thereon any imitation or colourable imitation of the plaintiff's trade marks, or either of them.

XXI. *Injunction against use of Trade Mark “Eureka:” account of profits.*

Seton, i. p. 236.

Let an injunction be awarded to perpetually restrain the defendants, their agents, &c., from applying the mark or

(a) Taken from R. S. C. 1883, App. D. s. 6.

(b) See also Forms of Orders, *post*.

App. A. title "Eureka," to any shirts manufactured by the defendants, or to any shirts sold by them, unless such shirts be manufactured by the plaintiff, and from selling or disposing of any shirts already marked with the mark or title "Eureka," unless such mark shall have been applied by the plaintiff and with his sanction, and from issuing any boxes or packages containing shirts upon or in which the mark or title "Eureka" shall be applied to shirts not of the plaintiff's manufacture; and let an account be taken of the profits made by the defendants in manufacturing and selling, and in selling shirts under the mark or title of "Eureka" since the day of : and let the defendants within [14] days from the date of the chief clerk's certificate to be made pursuant to this order, pay to the plaintiff the amount which, upon taking such account, shall be certified to be payable by the defendants to the plaintiff: and within [7] days after service of this order repay to the plaintiff the sum of being the amount of the taxed costs pursuant to the said decree paid by plaintiff to the defendants. Defendants to pay plaintiff's costs of action (including the costs of the interlocutory orders), other than his costs occasioned by the appeal. Liberty to apply.

XXII. *Injunction against using a Trade Mark on Cutlery.*

Seton, i. p. 235.

Let an injunction be awarded to restrain the defendants, W. and C. respectively (and every and each of them), and the respective servants, &c., of the said defendants (and every and each of them), from stamping, cutting or engraving, or causing or permitting to be stamped, cut or engraved upon any tools or other articles manufactured for, or bought, procured or sold by them, the words "Collins & Co., Hartford, Cast Steel, Warranted," or any other words similar to or only colourably differing from such words, or any words or marks so contrived as to represent or lead to the belief that the said tools or other articles were the manufacture of the said Collins & Co.: and from affixing or causing to be affixed to any tools or other articles manufactured for or bought, procured or sold by them, or otherwise using or employing or causing or permitting to be used or employed, any labels containing the words, &c. [as above], or any label or labels similar to or only colourably differing from the

labels made or used by the said Co., as in the plaintiffs App. A. (*statement of claim*), mentioned or so contrived and prepared as to represent or lead to the belief that the tools or other articles manufactured or sold by the defendants were the manufacture of the said Co. And also from selling, exporting, consigning or otherwise disposing of any tools or other articles having or bearing thereon any such words, marks, or labels as in the said (*statement of claim*) mentioned, or any other words, marks, or labels only colourably differing from the said marks and labels of the said Co.

XXIII. *Affixing Tickets or using Plaintiff's Design on Tickets.*

Johnson v. Orr Ewing, L. R. 7 App. C. 235.

Injunction restraining the defendants "their servants, workmen and agents, from fixing or causing to be affixed to any Turkey-red yarn not dyed by the plaintiffs, the ticket marked B., and from using two elephants on any ticket used on Turkey-red yarn, without clearly distinguishing such ticket from the plaintiffs' ticket, mentioned in the pleadings, being the exhibit marked A. referred to in the said depositions, or so as to represent or induce the belief that any of the said yarn was dyed by the plaintiffs;" with an order for an account of profits and costs.

XXIV. *Injunction against using a Trade Mark consisting of a Brand.*

L. R. 1 Ch. 192.

Let an injunction be awarded to restrain the defendants, &c., from affixing or causing to be affixed to any casks of wine shipped to their orders, the brand or marks of a crown, and the word *Seixo*, or any other combination of marks or words, so contrived as by colourable imitation or otherwise to represent the marks or brands of the plaintiff, and from employing any mark or words which should be so contrived as to represent or induce the belief that such wines were Crown *Seixo*, or the produce of *Quinta do Seixo*, or otherwise using the word *Seixo* without clearly distinguishing the same from the wine produced by the *Quinta de Seixo*.

APPENDIX B.

FORMS OF AGREEMENTS, ASSIGNMENTS, LICENSES, AND
MORTGAGES RELATING TO PATENTS, DESIGNS, AND
TRADE MARKS. AND INDEX TO PRECEDENTS.



PATENTS.

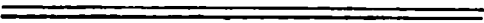
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I. *Agreement for Sale of Patent subject to payment of royalties.*
AGREEMENT made the day of BETWEEN
A. B. of of the one part and C. D. of of the
other part.
1. The said A. B. agrees to sell and the said C. D. agrees
to purchase the patent belonging to the said A. B. for [*insert*
title of patent] dated the day of and numbered

for the sum of £ to be paid by the said C. App. B.
D. to the said A. B. on or before the day of
and the royalties hereinafter mentioned.

2. The said C. D. shall also pay to the said A. B. during the unexpired term of the said patent the sum of £ for every manufactured according to the said patent and sold by the said C. D.

3. The accounts between the said parties shall be settled on the day of and the day of in every year.

4. In case the said letters patent, or any extension thereof shall be infringed the said C. D. shall forthwith at his own cost take all necessary proceedings for effectually protecting and defending the same and in default of his so doing the said A. B. shall be at liberty by notice in writing to determine this agreement.

5. If the said letters patent shall be judicially determined to be invalid then this agreement shall thenceforth become void but without prejudice to the right of the said A. B. to recover any monies then due to him hereunder.

6. If the said C. D. shall discontinue the manufacture or shall not sell at least in any one year the said A. B. shall be at liberty by notice in writing to determine this agreement.

7. If before the expiration of the said patent the said C. D. shall die, his successor in the said business shall be at liberty to enter into a similar agreement with the said A. B. for the payment to him during the then unexpired term of the said patent of the said sum of £ on all manufactured according to the said patent and sold by such successor with a similar proviso for the death of such successor dying, and in default of such substituted agreement being entered into within months after such death this agreement shall become void but without prejudice to the right of the said A. B. to recover any monies then due to him hereunder.

In WITNESS &c.

App. B.II. *Short Form of Assignment of Letters Patent.*

THIS INDENTURE made the . day of between A. B. of of the one part and C. D. of : WHEREAS the said A. B. is the inventor and patentee of an invention for (*set out title of invention*), the letters patent for which bear date and are numbered : AND WHEREAS the said A. B. has agreed with the said C. D. for the sale to him of the said letters patent and the exclusive and absolute benefit thereof for the sum of £ : NOW THIS INDENTURE WITNESSETH that in pursuance of the said recited agreement and in consideration of the sum of £ now paid by the said C. D. to the said A. B. (the receipt whereof is hereby acknowledged) the said A. B. [as beneficial owner (*a*)] doth hereby assign and transfer unto the said C. D. his executors administrators and assigns ALL THAT the said invention of improvements in and the said letters patent for the same and the full and exclusive benefit thereof and of any or every improvement extension or renewal thereof and the right to apply for and obtain an extension or renewal thereof and all rights, powers, and benefits to the said invention and letters patent belonging for the residue of the term of fourteen years granted by the said letters patent and any further term to be granted by any extension or prolongation of the same.

IN WITNESS &c.

III. *Short Form of Licence.*

THIS INDENTURE made the day of between A. B. of of the one part, and C. D. of of the other part. WHEREAS the said A. B. hath in consideration of the sum of £ agreed to grant to the said C. D. a licence to use and vend an invention for (*insert title of patent*) the letters patent for which bear date and are numbered and of which the said A. B. is the patentee. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ now paid by the said C. D. to the said A. B., the receipt whereof is hereby acknowledged, the said A. B. doth hereby grant unto

(*a*) These words will imply covenants for title, but not any covenant as to the validity of the patent.

the said C. D. [his executors, administrators, and assigns (a)] App. B.
 [the sole full and exclusive (b)] licence to use and exercise
 the said invention during the term of years from the
 date of this licence and to sell and dispose of all
 manufactured according to the said invention when and as
 the said C. D. shall think fit for his absolute use and benefit.

IV. *Licence to use Patent (longer form).*

THIS INDENTURE, made the day of between
 A. B. of of the one part, and C. D. of of the other part. WHEREAS the said A. B. is the patentee Recitals.
 and inventor of an invention for (*insert title of patent*), the
 letters patent for which are dated the day of
 and are numbered . AND WHEREAS the said A. B. has
 agreed with the said C. D. to grant him a licence to use and
 vend the said invention, subject to the provisoes hereinafter
 contained. NOW THIS INDENTURE WITNESSETH that in Testatum.
 pursuance of the said agreement, and in consideration of the
 royalties hereinafter reserved, and of the covenants and
 agreements on the part of the said C. D. hereinafter contained,
 the said A. B. grants unto the said C. D. [and his assigns]
 [the sole full and exclusive] licence to use and exercise the
 said invention during the term of years from the date
 of the licence, and to sell and dispose of all
 manufactured according to the said invention, when and as
 the said C. D. shall think fit, for his absolute use and benefit,
 [or in case licence is to be restricted to a particular place, licence For a
 to use and exercise the said invention at or any particular
 places within a radius of miles from , but not place.
 elsewhere, during the term of years from the
 day of and to sell and dispose of all
 manufactured within the limits of , according to
 the said invention at any time during the said term]. AND
 IT IS HEREBY MUTUALLY AGREED AND COVENANTED between Covenants.
 the said A. B. and C. D. as follows, namely : That the said To pay
 C. D. shall pay to the said A. B. for every royalty.
 manufactured and sold by the said C. D. according to the

(a) Omit these words if licence is not to be transmissible or assignable.

(b) Omit these words if licence is not to be exclusive.

App. B. said invention, in every half year of the said term the royalty or sum of £ to become due and payable at the end of months after the expiration of the half year, during which the same shall have been manufactured and sold : the first of such half years to begin on the day of .

To keep
account.

AND THAT the said C. D. shall within days after the expiration of every such half year, furnish to the said A. B. or his agent a full account and statement in writing of all manufactured or made or sold as aforesaid during the preceding half year, and every such statement and also any entry in the books of account of the said C. D. shall, if required by the said A. B. or his agent, be verified by statutory declaration of the said C. D. or of some person in his employment, who shall be approved for that purpose.

To inspect
place of
business.

AND THAT the said A. B. shall be at liberty at any time during the continuance of this licence to enter upon the place of business of the said C. D. in which the manufacture of shall be carried on, at any reasonable hour in the daytime, to inspect the same and the works thereof, and all manufactured or in course of manufacture in such place.

AND THAT in case the said letters patent shall be infringed it shall be lawful for the said C. D. at his own cost but in the name of the said A. B. to take all necessary legal proceedings for effectually protecting and defending the same.

AND THAT the said C. D. shall not assign or transfer this licence or any part thereof or grant any sub-licence to any person or persons whomsoever.

PROVIDED ALWAYS that this licence may be determined at any time after the first months by the said A. B. or C. D. on giving to the other of them 3 calendar months previous notice in writing of his intention so to do, and at the expiration of such notice these presents and all covenants and provisoes herein contained shall cease and be void, but without prejudice to the remedies of either party for the recovery of any monies then due to him hereunder.

Proviso for
determina-
tion on
notice.

Determina-
tion on
breach of
covenant,
&c.

PROVIDED ALWAYS that if the royalties or sums hereby made payable or any part thereof shall at any time be in arrear or unpaid for after the same shall have become due (notwithstanding no formal demand has been made for the payment of the same) or if the said C. D. shall become bankrupt or enter into any arrangement or composition with his creditors, or shall make default in performing any of the covenants, agreements, or provisoes hereinbefore contained,

and on his part to be observed and performed, then and in such case it shall be lawful for the said A. B., by notice in writing, to revoke this licence, but without prejudice to any right of action or remedy of the said A. B. for the recovery of any monies then due to him hereunder. **App. B.**

PROVIDED ALWAYS that if the said C. D. shall die during the said term, then this licence shall become void, but without prejudice to any right of action or remedy of the said A. B. for the recovery of any monies then due to him hereunder. **Proviso for death of licensee.**

PROVIDED ALWAYS that nothing herein contained shall render it incumbent on the said A. B. to pay the stamp duties payable from time to time for keeping up the said patent, but in the event of the same becoming void by non-payment of such stamp duties this licence and everything herein contained shall likewise become void, but without prejudice to any right of action or remedy of the said A. B. for the recovery of any monies then due to him hereunder, or in respect of any antecedent breach of any of the covenants or agreements of the said C. D. hereinbefore contained. **Determination on non-payment of stamp duties.**

NOTHING HEREIN contained shall constitute a partnership between the said parties. **No partnership.**

PROVIDED ALWAYS and it is hereby agreed that these presents shall not be construed as a warranty by the said A. B. of the novelty or utility of the said invention, the original validity of the said letters patent, or the sufficiency of the said specification or the filing thereof. **No warranty of novelty.**

V. Assignment of the Right to take out a patent in foreign countries on payment of Royalties.

THIS INDENTURE made the day of between A. of the 1st part, B. of the 2nd part, C. of the 3rd part, and W. of the 4th part. WHEREAS a patent for the monopoly, or exclusive use in the German dominions of a new system of winding gear and safety apparatus for mines was granted to the said B. by an instrument dated the day of . **Recital of foreign patent.**

AND WHEREAS by letters patent under the seal of the Patent Office dated the day of and numbered the sole and exclusive licence, power, privilege and authority of making, using, exercising, and vending an invention for [improvements in winding gear and safety apparatus in mines] (being a communication to the said A. from the said A. **Recital of patent in United Kingdom granted to A.**

App. B. B.) in the United Kingdom of Great Britain and Ireland and the Isle of Man was granted to the said A., his executors, administrators, and assigns for the time and upon the conditions in the said letters patent mentioned. **AND WHEREAS** the said letters patent were granted to the said A. as agent for, and on behalf of the said B. **AND WHEREAS** the said C. is a partner of the said B. in Germany. **AND WHEREAS** the said B. and the said C. have agreed with the said W. for the absolute sale to him of the sole and exclusive benefit of the said letters patent, dated the day of , and of all rights accruing therefrom, together with the right of taking out the patent hereby assigned, or any additional or supplementary letters patent in India, Canada, Australia, New Zealand, and in any other of the British colonies or dependencies as hereinafter mentioned. **AND WHEREAS** the said parties hereto have agreed to enter into the mutual covenants and agreements hereinafter contained. Now

Recital
that A. was agent of B.
That C. is B.'s partner.
That B. and C. have agreed to sell right to take out foreign patent to W.

Testatum. **THIS INDENTURE WITNESSETH**, that in pursuance of the said agreement and in consideration of certain royalties to be paid by the said W. and of certain other considerations as hereinafter mentioned, he, the said A., by the direction of the said B. and C. doth hereby grant and assign, and the said B. and C. do hereby respectively grant and assign and confirm unto the said W. his executors, administrators, and assigns, *all those* the said recited letters patent, dated the day of and the full and exclusive benefit and advantages thereof, together with the right to take out either in the name of the said W. or of the said B. and C., or either of them, but for the exclusive benefit of the said W. the patent hereby assigned, or any additional or supplementary patents in India, Canada, Australia, New Zealand, and in any other of the colonies or dependencies of the United Kingdom, and all rights, powers, authorities, privileges, advantages, profits, emoluments, and benefits of the said letters patent and premises in anywise appertaining or belonging. **To HAVE**

Habendum. **AND TO HOLD** the said letters patent and premises hereinbefore expressed to be hereby assigned unto the said W. his executors, administrators, and assigns. **AND** the said B. and C. do, and as separate covenants, each of them doth covenant with the said W. (his executors, administrators, and assigns *(a)*) that the said letters patent are good, valid, and effectual, and are in no wise invalidated, voided, or voidable. **AND** that

Covenant as to validity of letters patent.

(a) See Conveyancing Act, 1881, ss. 58, 59, as to it not being necessary to use these words.

they the said B. and C., their executors and administrators, **App. B.**
 and every person having or lawfully claiming any right, title, **For further**
 interest, or authority whatever in, or in respect to the said **assurance.**
 premises or any of them, will at all times at the cost of the
 person or persons requiring the same, execute and do all
 such further assurances and things for the better or more
 perfectly assigning, assuring, confirming, or extending the
 said letters patent and premises unto or for the benefit of
 the said W. his executors, administrators, or assigns, and for
 enabling him or them to commence, bring, or prosecute any
 action or other proceedings in respect of any infringements
 of the said privileges, and premises intended to be hereby
 assured or otherwise to secure to him or them the sole and
 exclusive use and enjoyment within the limits aforesaid of the
 said invention and premises, and of every addition thereto
 or alteration or improvement thereof made by the said B.
 and C., or either of them, as by the said W., his executors,
 administrators, or assigns, shall be reasonably required.
 AND the said A. doth hereby covenant with the said W. that **Against**
 he the said A. hath not done or knowingly suffered or been **incum-**
 party or privy to anything whereby the said premises herein- **brances.**
 before expressed to be hereby assigned or any of them, or
 any part thereof are is or may be impeached, affected, or
 incumbered, in title, estate, or otherwise or whereby he is
 in anywise prevented or hindered from joining in these
 presents in manner hereinafter appearing. AND THIS INDEN- **Further**
 TURE ALSO WITNESSETH, that in pursuance of the said agree- **testatum.**
 ment in this behalf, and for the considerations aforesaid, the
 said W. covenants with the said B. and C., and the said B. and
 C. do and as separate covenants each of them doth covenant
 with the said W. (but only so far as the several matters or
 things hereinbefore specified, are to be observed and per-
 formed by or to be obligatory upon the said covenanting **Covenants.**
 parties respectively), in manner following, that is to say,—

1. The said W. shall for every engine to be made or **To pay**
 constructed on the system perfected by the said letters **Royalty.**
 patent within the limits within which he has the right to
 manufacture under the letters patent hereinbefore expressed
 to be hereby assigned or under the renewal thereof, or within
 the limits within which under the provisions aforesaid he
 may acquire such rights, pay to the said B. and C. or to their
 order, the following sums of money by way of royalty ; that
 is to say, for every engine to be made or constructed as
 aforesaid, winding from shafts not more than 100 yards in

App. B. depth from the landing stage at the top to the loading stage at the bottom of the shaft the sum of £100, and for every such engine winding from shafts more than 100 yards in depth from the said landing stage at the top to the said loading stage at the bottom, the sum of 20s. for every yard at such depth; and for every engine in connection with which the balance rope is used, winding from shafts not more than 100 yards in depth from the said landing stage at the top to the said loading stage at the bottom, the sum of £50, and for every such last mentioned engine winding from shafts more than 100 yards in depth from the said landing stage at the top to the said loading stage at the bottom the sum of 10s. for every yard at such depth.

The said W. shall for every engine to be made or constructed as aforesaid to which the safety apparatus shall be affixed pay to the said B. and C. the following further sums, that is to say,

Provided nevertheless, that in respect to the first four orders only to be obtained by the said W., a reduction shall be made in the amount of royalty payable to the said B. and C., and for such four engines the royalty payable shall be as follows; that is to say, in respect of the first engine, however large, the sum of £40 only: in respect of the 2nd engine, however large, one quarter only of the royalty hereinbefore fixed, and in respect of the 3rd and 4th engines, however large, three-fourths only of the royalty hereinbefore fixed.

Division of
royalty.

2. The said A. shall receive one-sixth part of the royalties on all except the first four orders: the whole of the royalties on each of the first four orders, and five-sixths of such royalties on the remaining orders being handed over to the said B. and C.

Foreign
patents to
be taken
out.

3. The said W. shall use his best endeavours to take out with all due dispatch the said letters patent in India, Canada, and South Australia respectively, and pay all necessary and proper stamp duties requisite for keeping up the same, and do all in his power to further the introduction and sale of engines to be made or constructed to the system protected by the said letters patent within the limits aforesaid.

Keep
accounts.

4. The said W. will at all times hereafter enter into a book or books to be kept for that purpose, the particulars of all engines made in his district on the said patent, the particulars of all licences granted by him, and the consideration paid or reserved for the same, and also the name or

names, and place or places of abode of the grantee or grantees of such licences, and will forthwith communicate all such particulars and other necessary information to the said B. and C., their executors, administrators, assigns or their agent, App. B. AND also will make in every book to be kept in pursuance of these presents plain and perfect entries and accounts of every sum of money which he or they may receive in respect of such licence, and of all such several matters and things as may be necessary for the purpose of showing the state of the accounts. And will at all times hereafter suffer the said B. and C. their executors, administrators and assigns, or their agents to inspect the said book or books of accounts (including order and invoice books) and will produce to them all vouchers and do all other acts and things which shall be necessary for verifying the same or any of them. AND WILL during and so long as the said W. his executors, administrators, or assigns may be protected in the exclusive right to manufacture under the said letters patent or any renewal or renewals thereof, or of any additional or supplementary patents respectively as aforesaid, render to the said B. and C., their executors, administrators, or assigns, or their agents, within one calendar month next after the 25th day of March, the 24th day of June, the 29th day of September and the 25th day of December in each year a just and true account or particulars of the moneys and particulars of all licences granted, and of all articles manufactured by him, his executors, administrators, or assigns, under the said letters patent, or under any renewal or renewals thereof or under any such additional or supplementary patents respectively as aforesaid during the quarter ending on such last mentioned quarterly days respectively. And will as soon as the said engines shall have been delivered by him pay the said royalties in respect thereof to the said B. and C., their executors, administrators, or assigns.

5. The said W. shall be at liberty to deduct the sum of £150 (being the amount which he has paid to the said B. and C. in respect of certain preliminary expenses in connection with the said letters patent) or the full royalties hereinbefore reserved to the said B. and C. upon the first three engines to be manufactured by him as aforesaid at the rate of £50, and the royalties upon such engine. Deduction of preliminary expenses from royalty.

6. If any dispute, difference, or controversy shall arise between the said parties to these presents, or their respective Arbitration.

App. B. executors, administrators, or assigns, touching these presents or any clause or thing herein contained, or the construction hereof or any matter in any way connected with these presents, then the matter in difference shall be referred to two arbitrators or their umpire pursuant to the Common Law Procedure Act, 1854, and that the submission to reference hereby made, may at any time be made a rule of the High Court of Justice on the application of any party interested, and without notice to any other party.

IN WITNESS, &c.

VI. *Mortgage of Letters Patent.*

Parties. THIS INDENTURE made the day of between
A. B. of of the one part, and C. D. of of the
other part.

Recital. WHEREAS the said A. B. is the inventor and patentee of an
invention for [*insert title of patent*] which bear date and are
numbered .

AND WHEREAS the said C. D. has at the request of the said
A. B., agreed to lend him the sum of £ , upon having
the repayment thereof with interest at the rate hereinafter
mentioned, secured to him in manner hereinafter appearing.

Testatum. NOW THIS INDENTURE WITNESSETH that in pursuance of the
said agreement and in consideration of the sum of £
now paid to the said A. B. by the said C. D., the receipt
whereof is hereby acknowledged, the said A. B. doth hereby
**Covenant to pay prin-
cipal and
interest.** covenant with the said C. D. [his executors, administrators,
and assigns (a)] to pay to him on the day of next,
the sum of £ , with interest thereon in the meantime at the
rate of per cent. per annum, from the date hereof. AND
also so long as any principal money shall remain due under these
presents after the day aforesaid to pay to the said C. D.
interest thereon at the rate aforesaid by equal half yearly pay-
ments on the day of and the day of in
every year.

**Further
testatum.** AND THIS INDENTURE ALSO WITNESSETH that in further pur-
suance of the said agreement for the consideration aforesaid,
the said A. B. as beneficial owner doth hereby assign and
transfer unto the said C. D., all that the said invention of
improvements in and the said letters patent for the

(a) These words are now unnecessary in a covenant: Conveyancing Act, 1881, ss. 59, 60.

same, and the full and exclusive benefit thereof [and of any extension or renewal thereof, and the right to apply for and obtain such extension or renewal] and all rights, powers, and benefits, to the said invention and letters patents belonging, To HOLD the same UNTO the said C. D. for the residue of the term granted by the said letters patent [and any further term to be granted by any extension or prolongation of the same] subject to the proviso hereinafter contained for the redemption of the same. PROVIDED ALWAYS, and it is hereby agreed that if the said A. B., his heirs, executors, administrators, or assigns, shall on the said day of pay to the said C. D., his executors, administrators, or assigns, the said sum of £ , with interest for the same in the meantime, at the rate aforesaid, the said C. D., his executors, administrators, or assigns, shall at any time thereafter upon the request, and at the cost of the said A. B., his executors, administrators, or assigns, reassign the said invention and letters patent, hereby assigned to the said A. B., his executors, administrators, and assigns, or as he or they shall direct.

App. B.

Proviso for redemption.

AND THE said A. B. doth hereby covenant with the said C. D. that he, the said A. B., will pay all stamp duties, payable by law, for keeping up the said letters patent for the full term of fourteen years, from the date of the same and within the time prescribed by law for making such payments.

Covenant to pay stamp duties.

AND FURTHER, that he, the said A. B. will from time to time so long as any money shall remain on the security of these presents, use his best endeavours to discover any infringement now, already, or hereafter to be made of the said letters-patent hereby mortgaged, or any extension or renewal thereof; and will make known the same when discovered to the said C. D., and will if required in writing so to do by the said C. D. either himself take legal proceedings for the purpose of stopping such infringement or in case the said C. D. shall take such proceedings, will do everything in his power for the purpose of rendering the same effectual and will, whether such proceedings be effectual or not, pay on demand the costs of the said C. D. relating thereto as between solicitor and client. AND FURTHER, that in case the said A. B. shall neglect or refuse to make the payments aforesaid or any of them it shall be lawful for the said C. D. to pay the same. AND THAT all monies or expenses which shall be paid or incurred by the said C. D. in the exercise of any of the powers hereinbefore contained with interest for the same at the rate of per cent. per annum, from the time or respective times of the same having been paid or expended,

To protect patent from infringements.

Power for mortgagor to make payments to be charged on the premises.

App. B. shall be repaid by the said A. B. to the said C. D., on demand ; and in the meantime shall be charged upon the said premises hereby mortgaged. **PROVIDED ALWAYS**, and it is hereby agreed that at any time or times before the said C. D. shall have become entitled to exercise the power of sale hereinafter contained [vested in him by virtue of these presents, and the statute in that behalf] it shall be lawful for the said A. B. in the name and as the attorney of the said C. D. to grant licences for the use of the said invention, and letters patent, for such term or terms of years, upon such conditions, and in such manner as he may think fit, but so that the said A. B. shall not be authorised to enter into any covenants in the name of the said C. D., or to subject him to any personal liability, and so that no exclusive licence shall be granted without the consent in writing of the said C. D. and so that on every such licence there be reserved the best rent or royalty that can conveniently be obtained, without taking anything in the nature of a fine or premium, and so that there be contained in every such licence a power to the said C. D. to revoke the said licence in case of non-performance of the conditions therein contained, and on non-payment of the rents or royalties thereby reserved ; and so that the licensees do execute a counterpart or duplicate thereof, and do thereby covenant for the due payment of the rents or royalties thereby reserved.

Mortgagor
to grant
licences
until de-
fault.

Power for
mortgagee
to grant
licences.

PROVIDED ALWAYS, and it is hereby agreed that at any time or times after he shall have become entitled to exercise the said power of sale it shall be lawful for the said C. D. to grant licences (whether exclusive or absolute, or unrestricted or not) for the use of the said invention and letters patent, for such term or terms of years, upon such conditions, and in such manner as he may think fit, and in consideration of a sum or sums in gross or any rents or royalties or otherwise.

Power of
sale (a).

AND IT IS HEREBY agreed that it shall be lawful for the mortgagee, his executors, administrators, or assigns, at any time or times after the said day of , without any further consent of the said mortgagor, his executors, administrators, or assigns, to sell the said invention, letters patent, and premises hereby mortgaged, or any part or parts thereof, either by public auction or private contract, and subject to any special or other stipulations or conditions as to title or otherwise which may be deemed proper, with power to buy in at any sale by auction and to rescind or vary

(a) See Conveyancing Act, 1881, s. 19, as to statutory power of sale.

any contract for sale, and to resell the said invention, letters App. B.
 patent, and premises, which may be so bought in or as to
 which the contract for sale shall have been rescinded without
 being responsible for any loss occasioned thereby ; and for the
 purposes aforesaid, to execute and do all such assurances and
 things as he may think fit. PROVIDED ALWAYS, and it is here-
 by agreed that the said mortgagee, his executors, admi-
 nistrators, or assigns, shall not exercise the power of sale
 hereinbefore contained unless and until default shall have
 been made in payment of some moneys intended to be hereby
 secured, and he or they shall have given a notice in writing
 to the said mortgagor, his executors, administrators, or
 assigns, or some or one of them, to pay off the moneys for
 the time being owing on this security, or left a notice in
 writing to that effect, or sent such notice by post in a
 registered letter addressed to him or them, at his or their
 or some one of their usual or last known place or places of
 abode or business in England, and default shall have been
 made in payment of such moneys or part thereof for
 calendar months from the time of giving or leaving such
 notice, or unless and until some interest owing on this
 security shall be in arrear for calendar months, or unless
 and until default shall have been made in the performance
 or observance of some covenant or provision herein contained
 and on the part of the said mortgagor, his executors, admi-
 nistrators or assigns to be performed (other than the covenant
 for payment of the said principal and interest) and any such
 notice as aforesaid shall be sufficient, although not addressed
 to any person by name or description ; and although any
 person or persons affected thereby may be unborn, un-
 ascertained, or under disability. PROVIDED ALWAYS, and it
 is hereby declared that upon any sale purporting to be made
 in pursuance of the aforesaid power in that behalf the pur-
 chaser or purchasers shall not be bound to see or inquire
 whether either of the cases mentioned in the last proviso has
 happened, or whether any default has been made in payment
 of any moneys intended to be hereby secured, or whether
 any money remains owing on this security, or as to the
 necessity or expediency of the conditions subject to which
 the sale is made, or otherwise as to the regularity of the sale,
 or be affected by express notice of any irregularity whatsoever
 therein, and notwithstanding any such irregularity such sale
 shall as far as regards the safety and protection of purchasers
 be deemed to be within the aforesaid power in that behalf
 and be valid and effectual, and the remedy of the said mort-

Events in
 which
 power
 is to be
 exercised.

Protection
 of pur-
 chasers.

App. B. gagor, his heirs, or assigns, in respect of any breach of the proviso lastly hereinbefore contained or of any irregularity in such sale shall be in damages only.

Receipt (a). AND IT IS hereby agreed that upon any such sale as aforesaid, the receipt of the said mortgagee, executors, administrators, or assigns for the purchase money shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof or being answerable for the loss or misapplication thereof.

Trusts of purchase-money.

AND IT IS HEREBY AGREED that the said mortgagee, his executors, administrators, or assigns, shall hold the moneys to arise from any such sale as aforesaid, as well as any gross sum or sums, rents, or royalties, received upon the granting or in respect of any licence or licences aforesaid, upon trust in the first place, by and out of the same to reimburse himself or themselves or to pay all costs and expenses incurred, in or about such sale or otherwise in respect of the premises, and in the next place to apply such moneys in or towards the satisfaction of the moneys for the time being owing on this security, and then to pay the surplus of any of the said purchase moneys unto the said mortgagor, his heirs, or assigns.

Power may be exercised by any person entitled to mortgage-money.
Indemnity clause.

AND it is hereby further agreed that the aforesaid power of sale may be exercised by any person or persons who shall for the time being be entitled to receive and give a discharge for the moneys owing on this security.

PROVIDED ALWAYS, and it is hereby agreed that the said mortgagee, his heirs, executors, administrators, and assigns, shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of any of the powers or trusts herein contained.

VII. Agreement for working a Patent between the patentee and a Capitalist who finds all moneys required (b).

AGREEMENT made this day of BETWEEN
A. B. of of the one part, and C. D. of of the
other part : WHEREAS the said C. D. is the inventor and
patentee of an invention for [*Insert title of letters patent*] the
letters patent for which bear date the day of
and are numbered . AND WHEREAS with a view to

(a) See Conveyancing Act, 1881, s. 22, for statutory power.

(b) This agreement, which practically constitutes a partnership, ought to be registered at Patent Office.

promote the success of the said letters patent, and to work App. B.
and carry out the same, the said A. B. has requested the said
C. D. to enter into the arrangement hereinafter contained,
IT IS HEREBY AGREED as follows.

1. The said C. D. shall advance and contribute from time Advance of
to time as may be required, all moneys necessary for working capital.
the said patent, [and all costs and expenses of protecting and
defending the same from infringement, and all expenses of
obtaining renewals or extensions of the same].

2. All moneys so advanced by the said C. D. shall be con- Capital
sidered to be the property of both the parties hereto in equal how shared.
proportions, and no money shall be required to be advanced
by the said A. B. in consideration of the value of the said
invention and letters patent, and of the benefits to be
derived from his services, skill, and assistance in working and
managing the same.

3. The net profits to be derived from working the said Division of
patent shall be equally divided between the parties hereto profits.
in equal shares.

4. The said A. B. shall give as much time and attention as Attention
may be necessary for working and developing the said to business.
invention, and shall use his best endeavours in promoting
the success thereof: but the said C. D. shall not be bound to
devote more time and attention than he may think fit.

5. During the continuance of this agreement neither of Neither to
the parties hereto shall without the consent of the other of grant
them, grant any licence for working the said patent, or sell licences or
or dispose of his share or interest in the same [or institute sell with-
any action or take any proceedings for the purpose of defend- out consent
ing the said letters patent from infringement or otherwise, of other.
or apply for any renewal or extension of the same.] [Or
make any payment or incur any expenses, debts or liabilities
in respect of the working of the said patent.]

6. The said patent shall be worked, and the business Patentee to
thereof carried on in the name of the said A. B. as patentee, work the
and proper accounts shall be kept by him of all payments patent.
made and moneys received and liabilities incurred in respect
thereof, and of all transactions relating thereto, and all
moneys received in respect of the working of the said patent
shall be paid into a bank to an account to be kept in the
joint names of the said parties, and shall not be paid out
except upon the joint cheque of both parties.

App. B. 7. The books of account and other documents relating to the said patent shall be kept in the custody of the said A. B., but the said C. D. shall at all times have access to the same. The accounts relating to the said patent shall be made up half yearly, the first of such accounts to be made up on the day of .

Books of
account.

Duration of
arrange-
ment- 8. The arrangement hereby entered into shall remain in force until the expiration of the term of the said letters patent, or of any renewal or extension thereof in case both parties shall so long live but subject to the right of the parties hereto [*or of the said C. D.*] to determine this agreement at the expiration of years from the date hereof on giving 3 calendar months previous notice in writing to either of them [*or to the said A. B.*].

Determina-
tion by
notice.

9. In case the arrangement hereby made be determined by notice as aforesaid, the said letters patent and any extension or renewal thereof, and the royalties to be thenceforth derived from any licences granted previously to such determination shall belong to the parties hereto, but each of them, his executors, administrators or assigns shall thenceforth be entitled to work and use the said invention and to grant licences (so long as the same are not exclusive licences) for working or using the same without being liable to account to the other of such parties, his executors, administrators or assigns, for the profits or royalties to be derived from the same.

Determina-
tion by
death.

10. In case the said arrangement shall be determined by the death of either of the parties hereto the survivor of them shall have the option of purchasing the share or interest of such deceased party in the said patent on paying to his representatives the share of such deceased party in the capital of the said business, and all profits which shall have become payable, but shall not have been actually paid to him : such option shall be declared in writing by giving to the legal representative or representatives of such deceased party, notice in writing within calendar months after his death, and the amount to which the representatives of such deceased party shall be entitled as aforesaid, shall be paid to them within calendar months after such death [*or by annual instalments, the first of such instalments to be payable on the expiration of calendar months, from the day of such death, interest on any sum unpaid being paid at per cent per annum*] and

the whole of the said patent, and the profits thereafter to accrue as well as all royalties or other proceeds to be derived from licences granted prior or subsequent to such death shall as from the day of such death belong to the said survivor, and such assignments and acts shall be executed and done as shall be necessary for vesting the same in him accordingly. App. B.

11. In case the said survivor shall not exercise the option aforesaid, then the said letters patent, and the royalties and proceeds thenceforth to be derived, shall as from the day of such death belong to the said survivor and the said representatives of the said deceased party, but the said survivor and the said representatives of such deceased party shall thenceforth be entitled to work and use the said patent, and to grant licences for working and using the same (not being exclusive licences) without being liable to account to the other of them for the profits or royalties to be derived from the same. Option not exercised.

12. Provided always that in case at any time before the said arrangement shall have been determined as aforesaid, either of the said parties shall be desirous of abandoning the working of the said patent, but the other shall be desirous to continue the working of the same, the said first mentioned party may by notice in writing to the other party declare his intention of abandoning the same, and the arrangement hereby made for working the same shall thereupon cease, and the party giving such notice shall be under no further liability in respect of the expenses of working the said patent, and the said patent and the profits and proceeds (if any,) thereof shall thenceforth be the absolute property of the party to whom such notice is given, and such assignments and acts shall be executed and done as shall be necessary for vesting the same in him accordingly. Provision for one to abandon.

VIII. *Agreement for working a Patent between the Patentee and a Capitalist, all monies required being advanced equally.*

1. *Parties as in preceding precedent.*

2. Each of the said parties hereto shall find and advance one moiety of all moneys which may be required for working the said patent [*continue as in preceding precedent*] provided Each to advance moiety of moneys required.

App. B. always that in case either party shall at any time make advances in excess of the share which he is bound to contribute towards the expenses and payments aforesaid he shall be entitled to recover a moiety of such excess from the other of the said parties with interest thereon at the rate of £
 Charge. per cent per annum and such moiety and interest shall be a charge upon the share and interest of such other party in the said patent.

[Continue as in previous Precedent.]

Form of assignment of copyright in a Design (a).

I, A. B. of proprietor of design No. registered in class hereby transfer my right therein [insert if desired any limitations of the right] to C. D. of and do hereby authorize C. D. to insert his name on the register of designs accordingly.

Signed.

Assignment of a trade mark (b).

I, A. B. of in the county of being registered proprietor of the trade mark No. registered in Class [or state what is sufficient to identify the mark] in consideration of the sum of £ paid to me by C. D. carrying on business at in the county of [under the name or style of F. & Co.] hereby assign the said trade mark to the said E. F. together with the goodwill of the business concerned in the goods with respect to which the trade mark is registered.

In witness whereof, I have hereunto subscribed my name and affixed my seal this day of

Signed.

Witnesses.

(a) This form is based on the form contained in the 5 & 6 Vict. c. 100, s. 6. No form is contained in Designs Forms; nor is any special form prescribed by the Act or Rules. For Request to Register Assignment, see Designs Forms, K.

(b) This form is based on the Form used under the Act of 1875. See note to s. 78, as to a deed probably being unnecessary. As to connection of trade mark with good-will, see s. 70.

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THE MERCHANDISE MARKS ACT, 1862 (a).
25 & 26 Vic., c. 88.

*An Act to amend the law relating to the fraudulent marking
of Merchandise.*
[7th August, 1862.]

WHEREAS it is expedient to amend the laws relating to the fraudulent marking of merchandise, and to the sale of merchandise falsely marked for the purpose of fraud : be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Construction of Words. 1. In the construction of this Act the word "Person" shall include any person, whether a subject of Her Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of this country or of any of Her Majesty's colonies or dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of Her Majesty or not, or some of such persons subjects of Her Majesty and some of them

(a) See note to s. 76 of the Patents, Designs, and Trade Marks Act.

not, and whether such body corporate, body of the like App. C.
 nature, company, association, or society be established or
 carry on business within Her Majesty's dominions or
 elsewhere, or partly within Her Majesty's dominions and
 partly elsewhere; the word "mark" shall include any
 name, signature, word, letter, device, emblem, figure, sign,
 seal, stamp, diagram, label, ticket, or other mark of any
 other description; and the expression "Trade Mark" (a)
 shall include any and every such name, signature, word,
 letter, device, emblem, figure, sign, seal, stamp, diagram,
 label, ticket, or other mark as aforesaid lawfully used by any
 person to denote any chattel, or (in *Scotland*) any article of
 trade, manufacture, or merchandise, to be an article or
 thing of the manufacture, workmanship, production, or
 merchandise of such person, or to be an article or thing of
 any peculiar or particular description made or sold by such
 person, and shall also include any name, signature, word,
 letter, number, figure, mark, or sign which in pursuance of
 any statute or statutes for the time being in force relating to
 registered designs is to be put or placed upon or attached to
 any chattel or article during the existence or continuance of
 any copyright or other sole right acquired under the
 provisions of such statutes or any of them; the word
 "misdemeanor" shall include crime and offence in *Scotland*; (b)
 and the word "court" shall include any sheriff or sheriff
 substitute in *Scotland*.

2. Every person who, with intent to defraud, or to enable
 another to defraud any person, shall forge or counterfeit, or
 cause or procure to be forged or counterfeited, any trade
 mark, or shall apply, or cause or procure to be applied, any
 trade mark or any forged or counterfeited trade mark to any
 chattel or article not being the manufacture, workmanship,
 production, or merchandise of any person denoted or
 intended to be denoted by such trade mark, or denoted
 or intended to be denoted by such forged or counterfeited
 trade mark, or not being the manufacture, workmanship,
 production, or merchandise of any person whose trade mark
 shall be so forged or counterfeited, or shall apply, or cause
 or procure to be applied, any trade mark or any forged or
 counterfeited trade mark to any chattel or article, not being
 the particular or peculiar description of manufacture,
 Forging
 a Trade
 Mark or
 falsely
 applying
 any Trade
 Mark with
 intent to
 defraud, a
 misde-
 meanor.

(a) See s. 64 of the Patent, Designs, and Trade Marks Act.

(b) See *Ford v. Foster*, L. R. 7 Ch. 611.

App. C. workmanship, production, or merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to Her Majesty every chattel and article belonging to such person to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark or forged or counterfeited trade mark as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark, or forged or counterfeited trade mark as aforesaid, shall have been so applied, and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to Her Majesty; and the court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such court shall think fit.

Applying a forged trade mark to any vessel, case, wrapper, &c., in or with which any article is sold or intended to be sold, a misdemeanor.

3. Every person who, with intent to defraud, or to enable another to defraud, any person, shall apply or cause or procure to be applied any trade mark or any forged or counterfeited trade mark to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, on, or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall enclose or place any chattel or article or cause or procure any chattel or article to be enclosed or placed in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach or cause or procure to be applied or attached to any chattel or article any case, cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall enclose, place, or attach any chattel or article, or cause or procure any chattel or article, to be enclosed, placed, or attached, in, upon, under, with or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing having thereon any trade mark of any other person, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to Her Majesty every such chattel and article, and also every

such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid in the possession or power of such person ; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid, and every instrument in the possession or power of such person and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been applied, and also every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to Her Majesty ; and the court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such court shall think fit. (a)

App. C.

4. Every person who, after the thirty-first day of *December* one thousand eight hundred and sixty three, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such chattel or article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall be so sold or uttered or exposed for sale or other purpose as aforesaid, shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold, uttered, offered, or exposed for sale or other purpose as aforesaid, and a further sum not exceeding five pounds and not less than ten shillings.

Selling articles with forged or false trade marks after 31st December, 1863, penalty equal to value of article sold, and a sum not exceeding 5*l.* nor less than 10*s.*

5. Every addition to and every alteration of, and also every

Additions to and

(a) A prosecution under this section may be compromised; *Fisher v. Apollinaris Co.*, L. R. 10 Ch. 297.

App. C. imitation of any trade mark which shall be made, applied, or used with intent to defraud, or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or shall cause such imitation of a trade mark to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged and counterfeited trade mark within the meaning of this act ; and every act of making, applying or otherwise using any such addition to or alteration of a trade mark or any such imitation of a trade mark as aforesaid done by any person with intent to defraud, or to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

alterations of trade marks made with intent to defraud to be deemed forgeries.

Any person who, after 31st December, 1863, shall have sold an article having a false trade mark to be bound to give information where he procured it ;

6. Where any person who, at any time after the thirty-first day of *December* one thousand eight hundred and sixty-three, shall have sold, uttered, or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark, or such forged or counterfeited trade mark as aforesaid, be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall have been sold or exposed for sale, such person shall be bound upon demand in writing delivered to him or left for him at his last known dwelling house or at the place of sale or exposure for sale by or on the behalf of any person whose trade mark shall have been so forged or counterfeited, or used without lawful authority or excuse as aforesaid, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom he shall have purchased or obtained such chattel or article, and of the time when he obtained the same ; and it shall be lawful for any justice of the peace, on information on oath of such demand and refusal, to summon before him the party refusing, and on being satisfied that such demand ought to be complied with to order such information to be given within a certain time to be appointed by

Power to justices to summon parties refusing to give information.

him ; any such party who shall refuse or neglect to comply with such order shall for every such offence forfeit and pay to Her Majesty the sum of five pounds, and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the Trade Mark, together with which such chattel or article was sold, uttered, or exposed for sale or other purpose as aforesaid, at the time of such selling, uttering, or exposing was a forged, counterfeited, and false Trade Mark, or was the Trade Mark of a person which had been used without lawful authority or excuse, as the case may be.

App. C.

Penalty for refusal, 5*l*.

7. Every person who, with intent to defraud or to enable another to defraud, shall put or cause or procure to be put upon any chattel or article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which any chattel or article shall be intended to be or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame, or other thing in or by means of which any chattel or article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or any part thereof, or of the place or country in which such chattel or article shall have been made, manufactured, or produced, or shall put or cause or procure to be put upon any such chattel or article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark for the purpose of falsely indicating such chattel or article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, (a) privilege, or copyright, shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold or uttered or exposed for sale, and a further sum not exceeding five pounds and not less than ten shillings.

Marking any false indication of quantity, &c., upon an article with intent to defraud, penalty a sum equal to the value of the article and the further sum not exceeding 5*l*. and not less than 10*s*.

8. Every person who, after the thirty-first day of *December* one thousand eight hundred and sixty-three, shall sell, utter, exposing or for sale

(a) As to a person wrongfully inserting the word "patent" in his trade mark not being entitled to the benefit of the provisions of the act, see *Morgan v. McAdam*, 36 L. J. Ch. 228.

App. C.

after the
31st De-
cember,
1863,
articles
with false
statement
of quanti-
ties, &c.,
penalty not
more than
5*l.* or less
than 5*s.*

or expose for sale or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article upon which shall have been, to his knowledge, put, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put, or upon any case, frame, or other thing used or employed to expose or exhibit such chattel or article for sale shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article or any part thereof, or the place or country in which such chattel or article shall have been made, manufactured, or produced, shall for every such offence forfeit and pay to Her Majesty a sum not exceeding five pounds and not less than five shillings.

Proviso
that it shall
not be an
offence to
apply
names or
words
known to
be used for
indicating
particular
classes of
manufac-
tures.

9. Provided always, that the provisions of this act shall not be construed so as to make it any offence for any person to apply to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing with which such chattel or article shall be sold or intended to be sold, any name, word, or expression generally used for indicating such chattel or article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale any chattel or article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word, or expression as aforesaid shall have been applied.

Description
of trade
marks and
forged
trade
marks in
indict-
ments, &c.

10. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark shall be intended to be mentioned it shall be sufficient to mention or state the same to be a trade mark without further or otherwise describing such trade mark, or setting forth any copy or fac-simile thereof; and in every indictment, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark without further or otherwise describing such forged or counterfeit trade mark, or setting forth any copy or fac-simile thereof.

11. The provisions in this act contained of or concerning **App. C.**
 any act, or any proceeding, judgment, or conviction for any
 act hereby declared to be a misdemeanor or offence, shall
 not nor shall any of them take away, diminish, or prejudicially
 affect any suit, process, proceeding, right, or remedy which
 any person aggrieved by such act may be entitled to at law,
 in equity, or otherwise, and shall not nor shall any of them
 exempt or excuse any person from answering or making
 discovery upon examination as a witness or upon inter-
 rogatories, or otherwise, in any suit or other civil proceeding:
 provided always, that no evidence, statement, or discovery
 which any person shall be compelled to give or make shall be
 admissible in evidence against such person in support of any
 indictment for a misdemeanor at common law or otherwise,
 or of any proceeding under the provisions of this act.

Conviction
not to
affect any
right or
civil
remedy.

12. In every indictment, information, conviction, pleading,
 and proceeding against any person for any misdemeanor or
 other offence against the provisions of this act in which it
 shall be necessary to allege or mention an intent to defraud,
 or to enable another to defraud, it shall be sufficient to
 allege or mention that the person accused of having done any
 act which is hereby made a misdemeanor or other offence
 did such act with intent to defraud, or with intent to enable
 some other person to defraud, without alleging or mentioning
 an intent to defraud any particular person: and on the trial
 of any such indictment or information for any such
 misdemeanor, and on the hearing of any information or
 charge of or for any such other offence as aforesaid, and on
 the trial of any action against any person to recover a
 penalty for any such other offence as aforesaid, it shall not
 be necessary to prove an intent to defraud any particular
 person, or an intent to enable any particular person to
 defraud any particular person, but it shall be sufficient to
 prove with respect to every such misdemeanor and offence
 that the person accused did the act charged with intent
 to defraud, or with intent to enable some other person
 to defraud, or with the intent that any other person might
 be enabled to defraud.

Intent to
defraud,
&c., any
particular
person
need not be
alleged in
an indict-
ment, &c.
or proved.

13. Every person who shall aid, abet, counsel, or procure
 the commission of any offence which is by this act made a
 misdemeanor shall also be guilty of a misdemeanor.

Persons
who aid in
the com-
mission of
a misde-
meanor to

14. Every person who shall be convicted or found guilty

App. C. of any offence which is by this act made a misdemeanor shall be liable, at the discretion of the court, and as the court shall award, to suffer such punishment by imprisonment for not more than two years, with or without hard labour, or by fine, or both by imprisonment with or without hard labour and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

be also
guilty.
Punish-
ment for
misde-
meanor
under this
Act.

Recovery of
penalties.

15. In every case in which any person shall have committed or done any offence or act whereby he shall have forfeited or become liable to pay to Her Majesty any of the penalties or sums of money mentioned in the provisions of this act, every such penalty or sum of money shall or may be recovered in *England, Wales, or Ireland* in an action of debt, which any person may as plaintiff for and on behalf of Her Majesty commence and prosecute to judgment in any court of record, and the amount of every such penalty or sum of money to be recovered in any such action shall or may be determined by the jury (if any) sworn to try any issue in such action, and if there shall be no such jury then by the court or some other jury, as the court shall think fit, or instead of any such action being commenced such penalty or sum of money shall or may in *England or Wales* be recovered by a summary proceeding before two justices of the peace having jurisdiction in the county or place where the party offending shall reside or have any place of business, or in the county or place in which the offence shall have been committed ; and shall or may in *Ireland* be recovered in like manner by civil bill in the Civil Bill Court of the county or place in which the offence was committed, or in which the offender shall reside or have any place of business ; and shall or may in *Scotland* be recovered by action before the Court of Session in ordinary form or by summary action before the sheriff of the county where the offence shall have been committed or the offender may reside or have any place of business, which sheriff, upon proof of the offence, either by the confession of the person offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable in the penalty or penalties aforesaid as also in expenses ; and it shall be lawful for the sheriff in pronouncing such judgment for the penalty or penalties and costs to insert in such judgment a warrant in the event of such penalty or penalties and costs not being paid to levy and recover the amount of the same by poinding : provided always, that it shall be lawful to the sheriff, in the

event of his dismissing the action and assoilzing the defender, to find the complainer liable in expenses, and any judgment so to be pronounced by the sheriff in such summary action shall be final and conclusive, and not subject to review by advocacy, suspension, reduction, or otherwise. **App. C.**

16. In every case in which any such penalty or sum of money forfeited to Her Majesty as herein-before mentioned shall be sought to be recovered by a summary proceeding before two justices of the peace, the offence or act by the committing or doing of which such penalty or sum of money shall have been so forfeited shall be and be deemed to be an offence and act within the meaning of a statute passed in the twelfth year of the reign of Her present Majesty, intituled *an act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders*; and the information, conviction of the offender, and other proceedings for the recovery of the penalty or sum so forfeited shall be had according to the provisions of the said act. Summary proceedings before justices to be within 11 & 12 Vict. c. 43.

17. In every case in which judgment shall be obtained in any such action as aforesaid for the amount of any such penalty or sum of money forfeited to Her Majesty, the amount thereof shall be paid by the defendant to the sheriff or the officer of the court, who shall account for the same in like manner as other monies payable to Her Majesty, and, if it be not paid, may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding, as money due to Her Majesty; and the plaintiff suing on behalf of Her Majesty, upon obtaining judgment, shall be entitled to recover and have execution for all his costs of suit, which shall include a full indemnity for all costs and charges which he shall or may have expended or incurred in, about, or for the purposes of the action, unless the court, or a judge thereof, shall direct that costs of the ordinary amount only shall be allowed. In actions penalties to be accounted for in like manner as other monies payable to the crown, and plaintiffs to recover full costs of suit.

18. No person shall commence any action or proceeding for the recovery of any penalty, or procuring the conviction of any offender in manner herein-before provided, after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding. Limitations of actions, &c.

19. In every case in which at any time after the thirty-first day of December one thousand eight hundred and sixty- After 31st December, 1863,

App. C. three any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such chattel or article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

vendor of
an article
with a
trade mark
to be
deemed to
contract
that the
mark is
genuine.

After 31st December, 1863, vendor of an article with description upon it of its quantity to be deemed to contract that the description was true.

20. In every case in which at any time after the thirty-first day of *December* one thousand eight hundred and sixty-three any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article upon which, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or the place or country in which such chattel or article shall have been made, manufactured, or produced, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement, or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

In suits at law or in equity against persons for using forged trade marks, court may order article to destroyed,

21. In every case in any suit at law or in equity against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark, to any chattel or article, or for selling, exposing for sale, or uttering any chattel or article with any trade mark falsely or wrongfully applied thereto, or with any forged or counterfeit trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff shall obtain a judgment or decree against the defendant, the Court shall have power to direct every such chattel and article to be destroyed or otherwise

disposed of; and in every such suit in a court of law the court shall or may upon giving judgment for the plaintiff award a writ of injunction or injunctions to the defendant commanding him to forbear from committing and not by himself or otherwise to repeat or commit any offence or wrongful act of the like nature as that of which he shall or may have been convicted by such judgment, and any disobedience of any such writ of injunction or injunctions shall be punished as a contempt of court; and in every such suit at law or in equity it shall be lawful for the court or a judge thereof to make such order as such court or judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeit trade mark, or any such trade mark as aforesaid, shall be alleged to be used or applied as aforesaid, and of every or any chattel, article, and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully applying any trade mark; and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of court.

App. C.

and may
award
injunction,
&c.

22. In every case in which any person shall do or cause to be done any of the wrongful acts following; (that is to say,) shall forge or counterfeit any trade mark; or for the purpose of sale, or for the purpose of any manufacture or trade, shall apply any forged or counterfeit trade mark to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing in or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture; or shall inclose or place any chattel or article in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied; or shall apply or attach to any chattel or article any case, cover, reel, wrapper, band, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied; or

Persons
aggrieved
by for-
geries may
recover
damages
against the
guilty
parties.

App. C. shall inclose, place, or attach any chattel or article in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, reel, wrapper, band, ticket, label, or other thing having thereon any trade mark of any other person; every person aggrieved by any such wrongful act shall be entitled to maintain an action or suit for damages in respect thereof against the person who shall be guilty of having done such act or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act, and the committal of any similar act.

Defendant obtaining a verdict to have full indemnity for costs. 23. In every action which any person shall under the provisions of this act commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if the defendant shall obtain judgment, he shall be entitled to recover his costs of suit, which shall include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the court or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.

A plaintiff suing for a penalty may be compelled to give security for costs. 24. In any action which any person shall, under the provisions of this act commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if it shall be shown to the satisfaction of the court or a judge thereof that the person suing as plaintiff for or on behalf of Her Majesty has no ground for alleging that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum of money is alleged to have become payable, and also that the person so suing as plaintiff is not resident within the jurisdiction of the court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the court or judge shall or may order that the plaintiff shall give security by the bond or recognizance of himself and a surety, or by the deposit of a sum of money, or otherwise, as the court or judge shall think fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

Act not to affect the Corporation of Cutlers of Hallam- 25. Nothing in this act contained shall be construed to affect the rights and privileges of the Corporation of Cutlers of the liberty of *Hallamshire* in the county of *York*, nor shall anything in this act contained be construed in any way to repeal or make void any of the provisions contained in the

fifty-ninth *George Third*, Chapter Seven, intituled *An Act to regulate the Cutlery Trade in England*. **App. C.**

26. The expression "The Merchandise Marks Act, 1862," shall be a sufficient description of this act.

shire, nor
to repeal
59 G. 3,
c. 7.

Short title.

THE CUTLERS' COMPANY'S ACT, 1623 (a).

(21 Jac. I. c. 31.)

1. Be it enacted that all persons using to make knives, blades, scissers, sheeres, sickles, cutlery wares, and all other wares and manufactures made or wrought of iron and steele, dwelling or inhabiting within the said lordship and libertie of Hallamshire, or within six miles compass of the same, be from henceforth and hereafter may be in deed and in name one body politic perpetual and incorporate of one Master, two Wardens, Six Searchers and four-and-twenty assistants and commonalty of the said Company of Cutlers of the lordship of Hallamshire in the county of York : and that they by the name of Master, Wardens, Searchers and assistants and commonalty of the Company of Cutlers of Hallamshire in the said county of York, may be and by virtue of these presents be really actually and fully incorporated, created, made, and erected one body corporate and politic to all intents and purposes, and have perpetual succession, and be called and known by the name of Master Wardens Searchers and Assistants and Commonalty of the Company of Cutlers in Hallamshire in the county of York : and further that it may be hereafter lawful to the said Master Wardens Searchers and Assistants in and upon the feast day of St. Bartholomew the Apostle, in every year or at any other convenient time of the year to nominate, elect, choose and swear one Master, two Wardens and Six Searchers and four-and-twenty assistants to be chosen out of the said Company, to order rule and govern the said Corporation and Company of Cutlers during the time of one whole year then next ensuing, and until there shall be other chosen in their rooms.

The remaining sections of this act are repealed by the 31 Geo. III. c. 58 (1791).

(a) As to the Cutlers Company of Hallamshire, see s. 81 of the Patents, Designs, and Trade Marks Act, and the note thereto.

App. C.

THE CUTLERS' COMPANY'S ACT, 1791.

31 Geo. III. c. 58.

Repeal of
greater
part of Act
of 1623.

I. Former Act, *i.e.*, 21 Jac. I. c. 31, repealed except so far as it relates to the incorporation existence and continuation of the Company.

II. Company restricted to Masters, Wardens, Searchers, Assistants, and Freemen.

III.—VI. Provisions relating to government of the company.

Appren-
tices who
have served
seven years
at 21 to
have free-
dom and a
mark.

VII. And be it enacted that from and after the 24th June, 1791, every person who shall have served an apprenticeship for the term of seven years, by or under a contract indenture or instrument in writing, inrolled as hereinafter is mentioned to any member of the said company using or exercising the arts or trades of makers of knives, sickles, sheers, scissors, razors, files, and forks, or some of them within the said lordship, or liberty, or six miles compass of the same shall, after he shall have attained the age of 21 years, be entitled to the freedom of the said company, and the said Master, Wardens, Searchers and Assistants shall, and they are hereby required on the application of every such person so claiming to be entitled to his freedom at any of their public monthly meetings, and upon payment by him of such fee as is hereinafter mentioned, to grant the freedom of the said company to such person, and also to assign to him a mark to be struck engraved or used by him upon his goods and wares as he shall be entitled to make according to the true intent and meaning of this act: provided always that no person (except as hereinafter mentioned) shall be entitled to the freedom of the said company, who shall not have served such apprenticeship as aforesaid.

VIII. Repealed by the Cutlers' Company's Act, 1814.

IX., X. Provisions relating to freedom.

XI., XII. Transitional provisions.

XIII., XV., XVI. Repealed by the Cutlers' Company's Act, 1814.

XVII. Members not to strike, engrave, or use marks similar to marks assigned to other persons under the penalty of £20.

XVIII., XIX., XX., XXIV. Repealed by Cutlers' Company's Act, 1814. App. C.

XXIII. Repealed by Cutlers' Company's Act, 1801.
The remaining sections of the Act relate to matters unconnected with Marks.

THE CUTLERS' COMPANY'S ACT, 1801.

41 Geo. III. c. 97 (Local).

I. Repeal of s. 23 of the Cutlers' Company's Act, 1791.

II. And be it further enacted by the authority aforesaid, that from and after the passing of this act, any freeman of the said Company using or exercising the art or trade of a maker of knives, sickles, shears, scissors, razors, files and forks, or any of them within the said lordship or liberty or six miles compass of the same, who shall have gained or acquired by service purchase or otherwise, a mark for the marking of his goods, shall have full and free liberty, power and authority to give the said mark by his last will and testament to any person or persons whomsoever in like manner as any other personalty to him belonging, subject to the life estate and interest of any such freeman's widow therein: provided nevertheless, that the widow of any such freeman shall not by any such gift or will or by any thing in this act contained, be deprived of the said mark, or be prevented from using, exercising or carrying on all or any the trades, arts or occupations of her late husband, either during her widowhood or any future coverture, or from selling the said mark of her deceased husband, for and during the space of her natural life, subject nevertheless after her decease to such gift by will as her said husband, through whom she derives the same, shall have made thereof.

III. Provided also, that in case such freeman shall have made no such gift by will of his said mark, then the said mark shall, in case he leave a widow immediately after her death, and in case he leave no widow immediately after his death, go to and be enjoyed by such of his family and relatives as shall be entitled thereto in the same manner and subject to the same rules as any other of his personal property whatsoever.

App. C. IV. Provided that, if the person to whom such freeman shall so give the said mark as aforesaid, or in case such freeman shall not make any such gift thereof, if the executors or administrators of such freeman shall not claim and pay the mark rent for such mark, within the space of five years next after the decease of such freeman, in case he shall not happen to leave a widow, but if he shall leave a widow, then within five years after her death, then and from thenceforth, the said mark shall be considered as surrendered to the master, wardens, searchers, and assistants of the said company, who may afterwards, if they think proper, assign the same to any other freeman of the said company.

V. All persons who heretofore have been bound, or who shall hereafter be bound by the churchwardens and overseers of the poor of any parish, township, or place within the said lordship or liberty of Hallamshire or six miles compass of the same, to serve as a parish apprentice to any freeman of the said company residing in any such parish, or township, or place where such parish apprentice at the time of his being so bound did or shall belong shall prove to the satisfaction of any of Her Majesty's Justices of the Peace of the county, riding, city, or place where such person shall reside that he hath . . served a freeman . . . for the space of seven years shall . . . be entitled to, and gain his freedom in the said company, and the masters, wardens, searchers, and assistants of the said company shall, and are hereby required on the application of every such person grant the freedom of the company to such person, and also to assign to him a mark to be struck, engraved, or used by him upon such goods and wares as he shall be entitled to make according to the true intent and meaning of this act, and of the said act passed in the 31st year of his present Majesty.

CUTLERS' COMPANY'S ACT, 1814.

54 Geo. III. c. 119, 1814 (Local).

I. [Repeal of certain parts of 31 Geo. III. c. 58, 1791.]

Any person
may carry
on business
in Hallam-
shire,

II. It shall and may be lawful for any person to set up, exercise, or carry on for himself, or in partnership, or work as a journeyman in any of the arts or trades of makers of knives, sickles, shears, scissors, razors, files, and forks

within the said lordship or liberty of Hallamshire, or six miles compass of the same, although he shall not have been first admitted to, and have obtained the freedom of the said company, nor be or continue a member thereof, and also to have, retain, or keep in his service at the same time as many apprentices, and for such term of years or other period of time, as he may think proper.

App. C.

though not
a freeman.

III. And be it further enacted that in case any person using, exercising, or carrying on any of the said arts or trades within the said lordship or liberty, or six miles compass of the same (whether he shall be a freeman of the said company or not) shall apply to the said master, wardens, searchers, and assistants, to assign to him any mark or device to be stricken, impressed, or engraved upon his goods, wares, or manufactures, the said master, wardens, searchers, and assistants shall, and they are hereby authorized and required to assign the same to him accordingly, for which the person to whom the same shall be assigned, shall pay the sum of 40s. to the company over and above any stamp duty imposed, or which may hereafter be imposed by any subsisting or future Act of Parliament in respect of any such assignment of such mark: Provided that any such mark or device so to be assigned shall not have been previously assigned to, and then continue the property of any other person or persons within the said lordship or liberty, or six miles compass of the same, nor consist of a surname: Provided also that in case the mark so applied for shall theretofore have been assigned by the said master, wardens, searchers and assistants of the said company to any person, and shall have become surrendered to them, the person so applying shall pay for the same the sum of £3 over and besides the said sum of 40s. to be paid on the assignment thereof as aforesaid: provided also that every person who previously to the passing of this act shall have served or is now serving an apprenticeship, or shall have been or now is in the service of his father or mother in any of the arts or trades aforesaid, within the said lordship or liberty, or six miles compass of the same (such father or mother being a freeman or widow of a freeman) shall upon his becoming entitled to the freedom of the said corporation and applying for such mark as aforesaid, be entitled to have the same assigned to him on payment of the fees only which before the passing of this act were payable in respect thereof, by virtue of the said hereinbefore recited act of the 31st year aforesaid.

All persons
carrying on
specified
trades
within spe-
cified
limits to
have a
mark
assigned.

App. C.

Master,
&c., not
authorised
to assign
any person
a mark
which has
been used
in common
or by any
particular
person.

IV. And be it further enacted that nothing hereinbefore contained shall extend to authorize the said masters, wardens, searchers, and assistants to assign to any person applying to them as aforesaid, any mark or device which may at any time heretofore have been used in common among makers of knives, sickles, shears, scissors, razors, files, and forks, within the said lordship or liberty, or six miles compass of the same, nor to assign any mark or device which shall be then used by any person within the said district : provided always that previous notice in writing shall have been given to the said master, wardens, searchers and assistants, that such mark as aforesaid is, or was in common use, or then used by the person giving such notice.

Punishing
persons
counter-
feiting
marks.

V. And be it further enacted that if any member or members of the said company, or any other person or persons using, exercising, or carrying on any of such arts or trades as aforesaid, within the said lordship or liberty, or six miles compass of the same, shall at any time after the passing of this act, strike, engrave, impress, or use, or cause, or procure to be stricken, engraved, impressed, or used upon his, or their goods, wares, or manufactures, any mark, device, stamp, or impression, with intent to counterfeit or imitate any mark or device assigned, or which may hereafter be assigned by the said master, wardens, searchers, and assistants of the said company to, and be used by any other person, the person or persons so offending shall for every such offence forfeit and pay (in lieu of the penalty imposed by the said last recited act) any sum not exceeding £20, one moiety whereof shall be paid to the person whose mark shall have been so counterfeited or imitated, and the other moiety to the master and wardens of the said company : and the provisions in the last recited act contained for the recovery and application of the penalty thereby imposed, shall be used, applied, and put in force for the recovery and application of the penalty hereby made payable as fully and effectually as if the same provisions were in this act severally and separately repeated and re-enacted.

Marks
assigned
under this
Act may
be devised,
&c., like
marks

VI. And whereas by an act passed in the 41st year of his present Majesty (*i.e.*, 41 Geo. III. c. 58 (local)), certain provisions were made in respect of the marks of freemen of the said company on the event of their respective deaths : be it therefore enacted, that every mark to be assigned by the said master, wardens, searchers, and assistants, to " any "

person "by virtue" of the authority hereinbefore contained, may be devised, or in case of no devise thereof, shall go to and be enjoyed by the widow and family and relatives of any person dying possessed of any such mark or marks in like manner as provided in the said last recited act relative to marks : provided always that nothing therein contained shall be construed to extend to give the power of using such mark to more than one person of such family at the same time.

App. C.

under 41
Geo. III.
c. 97
(local).

THE CUTLERS' COMPANY'S ACT, 1860.

23 Vic. cxliii. (local).

I. The several provisions of the recited acts (*i.e.*, The Cutlers' Company's Acts, 1623, 1791, 1801, and 1814) now in force with respect to persons residing within the lordship or liberty of Hallamshire, or within six miles compass of the same, and using or exercising the arts or trades of makers of knives, sickles, shears, scissors, razors, files, and forks, shall henceforth extend and apply to and include persons residing within that lordship, or liberty, or within six miles compass of the same, and using or exercising the arts or trades of manufacturers of steel, and makers of saw and edge tools, and other articles of steel, or of steel and iron combined, having a cutting edge.

Provisions
of the re-
cited Acts
to extend
to manu-
facturers of
steel, &c.

II. Any person now, or from time to time hereafter, using or exercising the art or trade of a maker of knives, sickles, shears, scissors, razors, files, forks, saws, edge tools, or other articles of steel, or of steel and iron combined, having a cutting edge, or of a manufacture of steel within the lordship or liberty of Hallamshire in the county of York, or within six miles compass of the same, and not being a freeman of the Company, or entitled to the freedom thereof, may and shall on applying to the wardens, searchers, and assistants of the Company for leave to become a freeman thereof, and paying to them the sum of £20 over and above any other fees payable under the recited acts or any of them be admitted to the freedom of the Company, and shall thereupon and thenceforth be a freeman of the Company, and shall have a mark assigned to him.

Tradesmen
to be ad-
mitted to
the free-
dom of
company on
payment of
20*l.*

APPENDIX D.

RULES AS TO PROCEEDINGS BEFORE THE
JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL (*a*).

UNDER THE 5TH & 6TH WILL. IV., c. 83.

RULE I.

App. D. A party intending to apply by petition, under sect. 2 of the said act [or sect. 25 of Patents Act, 1883], shall give public notice by advertising in the London Gazette three times, and in three London papers, and three times in some country paper published in the town where or near to which he carries on any manufacture of anything made according to his specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition his Majesty under the said section, and shall in such advertisements state the object of such petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette), and that on or before such day, notice must be given of any opposition intended to be made to the petition ; and any person intending to oppose the said application, shall lodge notice to that effect at the Council Office, on or before such day so named in the said advertisements, and having lodged such notice shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

(*a*) By s. 25, sub-s. (6), these rules are to continue in force until altered by Her Majesty in Council. The 5 & 6 Will. IV., c. 83, is now repealed.

RULE II.

A party intending to apply by petition, under sect. 4 of the said act [now sect. 25 of Patents Act, 1883], shall in the advertisements directed to be published by the said section, give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette), and that on or before such day caveats must be entered; and any person intending to enter a caveat shall enter the same at the Council Office, on or before such day so named in the said advertisements; and having entered such caveat, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

RULE III.

Petitions under sects. 2 and 4 of the said act [now sect. 25 of Patents Act, 1883], must be presented within one week from the insertion of the last of the advertisements required to be published in the London Gazette.

RULE IV.

All petitions must be accompanied with affidavits of advertisements having been inserted according to the provisions of sect. 4 [now sect. 25 of Patents Act, 1883], of the said act, and the 1st and 2nd of these rules, and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the petitions.

RULE V.

All persons entering caveats under sect. 4 of the said act [now sect. 25 of the Patents Act, 1883], and all parties to any former suit or action touching letters patent, in respect of which petitions shall have been presented under sect. 2 [now sect. 25 of the Patents Act, 1883], of the said act, and all persons lodging notices of opposition under the 1st of these rules, shall respectively be entitled to be served with copies of petitions presented under the said sections, and no application to fix a time for hearing shall be made without affidavit of such service.

App. D.

RULE VI.

All parties served with petitions shall lodge at the Council Office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayers of such petitions.

RULE VII.

Parties may have copies of all papers lodged in respect of any application under the said act, at their own expense.

RULE VIII.

The registrar of the Privy Council, or other officer to whom it may be referred to tax the costs incurred in the matter of any petition presented under the said act, shall allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly.

RULE IX.

A party applying for an extension of a patent, under sect. 4 of the said act [now sect. 25 of the Patents Act, 1883], must lodge at the Council Office six printed copies of the specification, and also four copies of the balance sheet of expenditure and receipts relating to the patent in question, which accounts are to be proved on oath before the lords of the committee at the hearing. In the event of the applicant's specification not having been printed, and if the expense of making six copies of any drawing therein contained or referred to would be considerable, the lodging of two copies only of such specification and drawing will be deemed sufficient.

All copies mentioned in this rule must be lodged not less than one week before the day fixed for hearing the application.

The Judicial Committee will hear the Attorney-General, or other counsel, on behalf of the Crown, against granting any application made under either the 2nd or 4th section of the said act [now sect. 25 of the Patents Act, 1883], in case it shall be thought fit to oppose the same on such behalf.

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